VIRGINIA:

IN THE CIRCUIT COURT FOR THE CITY OF RICHMOND

JOHN MARSHALL COURTS BUILDING

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PHILIP MORRIS COMPANIES, INC., et al.,

Plaintiffs,

-against-

AMERICAN BROADCASTING COMPANIES, INC., et al.,

Defendants.

----------x

At Law No. 760CL94X 00816-00

June 14, 1995
9:09 a.m.

Videotaped deposition of KATHLEEN LINEHAN, taken by Defendants, pursuant to Subpoena, at the offices of Wilmer Cutler & Pickering, Esqs., 2445 M Street, N.W., Washington, D.C., before Gail F. Schorr, a Certified Shorthand Reporter and Notary Public within and for the State of New York.

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A P P E A R A N C E S:

WACHTELL LIPTON ROSEN & KATZ, ESQS.
Attorneys for Plaintiffs
51 West 52nd Street
New York, New York 10019-6618

BY: BARBARA ROBBINS, ESQ.,

WILMER CUTLER & PICKERING, ESQS.
Attorneys for Defendant
AMERICAN BROADCASTING COMPANIES
2445 M Street, N.W.
Washington, D.C. 20037-1420

BY: JOHN PAYTON, ESQ.,
-and-
DENISE ESPOSITO, ESQ.,
of Counsel.

ALSO PRESENT:

TERESA STUBS, Videographer
Action Legal Video, Inc.

CINDY KAHRAMANDIDIS, Legal Assistant
Wilmer Cutler & Pickering, Esqs.

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THE VIDEO OPERATOR: This is the video operator speaking, Teresa Stubs, of Action Legal Video, Incorporated, at 132 Nassau Street, New York, New York. We are here on this day, June 14th, 1995, at 9:09:45, the time which is continuously recorded on the videotape, at the offices of Wilmer Cutler, at 2445 M Street, Northwest, Washington, D.C., to take the videotaped deposition of Kathleen Linehan, on behalf of the defendants in the matter of Philip Morris Companies, Incorporated, et al., versus American Broadcasting Companies, Incorporated, et al., in the Circuit Court for the City of Richmond, Virginia, John Marshall Courts Building, At Law Number 76C0CL94X 00816-00.

Will counsel please introduce themself. The witness may be sworn.

MR. PAYTON: John Payton for defendants.

MS. ESPOSITO: Denise Esposito for defendants.

MS. ROBBINS: Barbara Robbins for plaintiffs.

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K A T H L E E N L I N E H A N,
residing at [DELETED]
having been first duly sworn by the Notary Public (Gail F. Schorr), was examined and testified as follows:

EXAMINATION BY MR. PAYTON:

09:09:16 Q. Good morning, Ms. Linehan. I see from the press release announcing your appointment that you're a lawyer; is that right?

A. Yes.

09:09:20 Q. Have you practiced?

A. No.

09:09:22 Q. You went directly from law school into a nonlegal career path?

A. Yes.

09:09:30 Q. Could you tell me what your present position is with Philip Morris?

A. I'm vice president of corporate affairs based in Lausanne, Switzerland, and it's basically a job that consists of doing government affairs, media relations for Philip Morris International in a region that's 108 countries. It's the Africa, Middle East, eastern Europe, central. I've been there about two and a half

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months.

09:10:04 Q. Are you presently an officer?

A. Yes, I think I still am because I haven't sent in my resignation letter. But I suspect that I will be because I'm no longer Philip Morris Companies, Inc.

09:10:22 Q. What was the officership that you, I guess you presently hold in Philip Morris as Philip Morris U.S.A.; is that right?

A. No, I think it was Philip Morris Companies, Inc.

10:32 Q. Okay.

A. Just by virtue of being vice president for government affairs in Washington, that particular job I guess automatically puts you on a slate of officers from Companies, Inc. So I was elected whatever, three plus years ago.

09:10:52 Q. Okay. So you were an officer because you were the head of the Washington office?

A. Yes.

09:10:56 Q. Vice president and head of the Washington office?

A. Yes.

1:02 Q. I see. Can you go back and just

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briefly go through your educational background starting just with college. Where did you go to college?

A. Maryland, University of Maryland.

09:11:10 Q. Okay. And when did you graduate?

A. 1972.

09:11:18 Q. Any particular major?

A. Political science. Actually, international relations.

09:11:24 Q. Okay. And did you go directly to law school?

A. No, I worked and I went to G -- George Washington grad school at night.

09:11:32 Q. Where did you work?

A. Oh, let's see. Well, back in 1973 I started at the Department of Interior. Then I went up to Capitol Hill to work for a congressman for a year plus. Then I went down to then the Federal Energy Administration and after I finished my Master's at GW, then I went to George Mason at night, law school, while I was working at then DOE, Department of Energy. I graduated in I guess it's 1980/'81. At that time I was a lobbyist with Gulf Oil. So it was basically

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working during the day and night school.

09:12:32 Q. Okay. I had it wrong. You went to Maryland, graduated in '72.

A. Mm-hmm.

09:12:38 Q. You then worked and went to GW --

A. Yeah, I was at GW while I was working on Capitol Hill.

09:12:44 Q. Okay. And you were working at GW towards a Master's degree?

A. Yes.

09:12:46 Q. In what?

A. I think it was actually called legislative -- legislation or something like that. It was a --

09:12:58 Q. Did you eventually get your Master's degree?

A. Yes.

09:13:00 Q. Do you know when that was?

A. I think '75.

09:13:08 Q. And you were working on the Hill at the time you were going to GW, going to the night program?

A. Yes.

.3:14 Q. And you said you were working for a

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congressman at some point in that?

A. Yes.

09:13:20 Q. Which congressman?

A. Congressman Davis of South Carolina.

09:13:32 Q. And you then began at George Mason a night program for a JD?

A. Mm-hmm.

09:13:38 Q. And you think you got that in 1980 or 1981?

A. I think 1980.

09:13:44 Q. And in between you worked at DOE I think for some years?

A. FEA and DOE.

09:13:54 Q. After your JD in 1980 you went to work for Gulf?

A. Gulf. Actually, I was at Gulf when I finished up and took the bar.

09:14:08 Q. When did you start at Philip Morris?

A. 1980 -- May of 1985.

09:14:14 Q. And what was your position?

A. I cannot remember the precise title. It may have been director, Washington relations or something like that.

MR. PAYTON: Let me have marked as

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Linehan Exhibit number 1 just the press release.

(Defendants' Linehan Exhibit 1 for identification, press release.)

09:15:00 Q. I've just handed you what's been marked Linehan Exhibit number 1. It's a news release, Philip Morris International news release announcing your appointment in March of this year to your present position, head of corporate affairs for Philip Morris International, for these regions. This is an accurate description of your history with the company?

A. Yes.

09:15:40 Q. When you started with Philip Morris in 1985, did you sign a confidentiality agreement?

A. I cannot recall.

09:15:50 Q. Do you recall at any time signing a confidentiality agreement with Philip Morris?

A. I just don't recall.

09:16:00 Q. When you were head of the Washington office, did you have responsibility for hiring people?

A. Yes.

.6:08 Q. Did you hire people?

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A. Yes.

09:16:10 Q. When you hired people, did you ask or require that they sign confidentiality agreements?

A. No.

09:16:16 Q. Are you aware of anyone in the Washington office that had signed a confidentiality agreement?

A. No. That doesn't mean that they didn't if they were in personnel. But I myself never was responsible for anything like that.

.6:30 Q. And you're not aware of anything like that?

A. No.

09:16:34 Q. Have you ever been deposed before?

A. Yes.

09:16:38 Q. In connection with Philip Morris?

A. Yes.

09:16:40 Q. Could you tell me --

A. I can't remember the name of the case.

09:16:42 Q. Okay.

A. It was a case in east St. Louis. The attorney who deposed me was a man named Bruce

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Cook and it was about two years ago.

09:16:58 Q. What was the issue?

A. What do you mean, his issue with me or --

09:17:08 Q. What was the issue in the lawsuit?

A. I just don't remember.

09:17:14 Q. What were you asked to testify about?

A. The deposition was very far ranging. He went from sort of smoking and health questions into my political activities with the Democratic Party. I think he -- it was a very interesting deposition.

09:17:40 Q. Was this a smoker's lawsuit where smokers were suing Philip Morris?

A. Yes, yeah.

09:17:46 Q. Do you know what your connection to this lawsuit was, why you were being deposed?

A. I have no idea.

09:17:54 Q. Were you asked questions about nicotine or addiction?

A. I don't recall. I'm -- one way or the other.

MR. PAYTON: Barbara, you think we can get a copy of her testimony?

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MS. ROBBINS: I'll let you know.

09:18:20 Q. Did you actually testify at trial?

A. No.

09:18:22 Q. Have you been deposed in any other matter that involves Philip Morris?

A. No.

09:18:26 Q. Have you been deposed in any other matter at all?

A. No.

09:18:30 Q. Have you testified in any other matter that involves Philip Morris?

A. No.

09:18:34 Q. Ever executed an affidavit in connection with your employment at Philip Morris?

A. No.

09:18:38 Q. Or a declaration?

A. What's a declaration?

09:18:44 Q. A declaration is simply a statement that you sign as being true and correct, your own statement? It's the new version of affidavits actually, under the federal rules.

A. I don't think so, no.

09:19:06 Q. What's the role of the Washington office?

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A. The Washington office is basically your typical corporate office. It represents, in this instance, food, beer and tobacco for Philip Morris before Congress and the administration.

09:19:26 Q. And regulatory agencies?

A. Yes.

09:19:30 Q. Does it have any relationship with the press?

A. No.

09:19:36 Q. What's the relationship between the Washington office and the communications department?

A. The communications department in New York?

09:19:42 Q. Yes.

A. Just that they're one other arm and that they are the principal contact point for media.

09:19:52 Q. No direct relationship?

A. No.

09:19:56 Q. Do they pass matters off to you and you pass matters off to them?

A. Usually it's the latter. If reporters call the Washington office, they

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automatically get sent to the communications people.

09:20:10 Q. Were you ever deputy treasurer of any Philip Morris company?

A. I don't think so.

09:20:20 Q. It doesn't ring any bells at all?

A. No.

09:20:28 Q. When you started at Philip Morris, were you at that time, this is 1985, were you familiar with the tobacco industry?

A. No.

:0:38 Q. Okay. How did you become familiar with it?

A. Really it was just over time starting in 1985.

09:20:46 Q. No training programs?

A. No.

09:20:48 Q. Just on the job?

A. Yeah.

09:20:56 Q. How did you prepare for this deposition?

MS. ROBBINS: Can I hear the question again.

1:02 Q. How did you prepare for this

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deposition?

MS. ROBBINS: I'm not sure what you're asking her.

09:21:06 Q. Did you review documents in connection with preparing for this deposition today?

MS. ROBBINS: You're talking about with counsel? You're talking about on her own? I don't know what you're talking about.

09:21:16 Q. Either way, did you review documents in connection with preparation for your deposition today?

A. I reviewed some documents with counsel, yes.

09:21:22 Q. Do you recall what documents you reviewed?

A. I looked at the Kessler February '94 letter. I looked at the statement that Philip Morris released prior to the ABC Day One broadcast. I looked at sort of miscellaneous documents on -- I guess a draft or something, a draft of the statement, prior draft of that statement. Stock analyst reports. I looked at the set of index cards I had written. That's

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about it.

09:22:56 Q. What were the index cards?

A. These -- what I could tell were notes to myself on different sort of subjects.

09:23:20 Q. Is that how you kept notes?

A. I mean I kept notes sometimes on index cards depending on what I was going to do with them I guess. I do a to-do list every day on a legal pad.

09:23:48 Q. Well, the note cards that you reviewed, you know, was there a big pile of them or was there a selection of them?

A. No, no, it was about five or six.

09:23:56 Q. Do you remember what the subjects were?

A. Yeah, recon, reconstituted tobacco, nicotine.

09:24:12 Q. Addiction?

A. Possibly.

09:24:14 Q. Denatured alcohol?

A. Yes.

09:24:24 Q. Anything else you remember reviewing?

A. You mean in terms of paper?

24:28 Q. Yes.

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A. There were -- oh, yes. The letter that Senator Kennedy sent to the GAO post-broadcast asking the GAO to investigate the claims. A "Dear Colleague" sent out by I think it was Congressman Waxman on a bill he introduced, one or two bills that were introduced by various congressmen in like the 1993/'94 time period. That's about it.

09:25:34 Q. You didn't review anybody else's testimony in this case?

A. No.

25:36 Q. Have you talked to anyone else who has been deposed in this case?

A. No.

09:25:42 Q. Have you viewed any of the videotapes that are being made?

A. No.

09:25:54 Q. I just thought I'd try. You said that you reviewed stock analyst reports. Is that something that you routinely received in the Washington office?

A. I did, yes, yes.

09:26:00 Q. Why is that?

A. I was on a list, standard list. I

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guess corporate officers or something like that would normally get a list like that -- paper like that.

09:26:16 Q. Could you quickly go from 1985 to the point in time when you become the head of the Washington office and as far as the positions you held and what you did in them at Philip Morris? You joined in 1985?

A. Mm-hmm.

09:26:30 Q. And you joined the Washington office?

A. Mm-hmm.

26:32 Q. And you're responsible for public relations?

A. No, I'm responsible for, well, legislation. As I -- as I mentioned, I'm not sure what the precise title was. It was director something. In that position I basically was a registered lobbyist representing then the company with respect to tobacco issues. I think at the time we actually still had 7-Up, so 7-Up. Miller to -- Miller beer to a minor extent. Mission Viejo which is a real estate company, again to a very minor extent. We hadn't at the time bought General Foods. They had their own office. So it

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was basically those subparts.

09:27:34 Q. But the principal part is tobacco?

A. Yes, yes. Then my title actually changed in 19 -- I just don't remember the precise year. I don't know whether it was 1988 or 1989. I became vice president for, again, I don't know what their title was, Washington relations, but that job entailed specifically the tobacco unit only. And at that point in time we had bought General Foods and Kraft and we had merged the office with everybody under one roof.

28:26 Q. How big is the office then?

A. Now or then?

09:28:32 Q. Then. Once you merged with --

A. It's about, let's say about the same number of people that we have today. Let's say 25 people.

09:28:42 Q. Okay. And before the merger with Kraft it was how large?

A. Boy. Don't hold me to this. I just don't know. Let's say 12.

09:28:54 Q. I just want a general understanding.

A. Also Miller was incorporated under the -- in the 1988/'89 time period.

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09:29:02 Q. Okay.

A. So that was an additional head count.

09:29:06 Q. Let me stop you for just a second. At this point in time, when you are VP for Washington relations or whatever the actual title is, responsible for tobacco only, do you have a relationship with similar offices for other tobacco companies?

A. Yes.

09:29:26 Q. For example, RJR's person?

A. RJR.

09:32 Q. Who is RJR's person? Who is your counterpart?

MS. ROBBINS: You're talking about --

A. Then?

09:29:36 Q. Then.

A. I guess my counterpart might have been Burleigh Leonard. In fact, I'm sure that would be the equivalent.

09:29:50 Q. And they have a Washington office?

A. Yes.

09:29:52 Q. Did you have relationships with other counterparts at other tobacco companies?

A. Really the other tobacco companies

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didn't have Washington offices.

09:30:06 Q. And what relationship, if any, did you have at that time with Tobacco Institute?

A. Well, Philip Morris was a -- is a member as are or were not all but most of the other tobacco companies and it's a typical trade association. So, you know, they convene meetings.

09:30:24 Q. Would you go on behalf of Philip Morris to the meetings?

A. Sometimes.

30:30 Q. Were you a Philip Morris representative on the executive committee?

A. Yes, I was. But that wasn't till later.

09:30:44 Q. So at this point in time, which is '88 or '89, you may have gone to some meetings on behalf of Philip Morris, but not in the capacity as representative to the executive committee?

A. That's right.

09:30:56 Q. Okay, you can pick it up at '88 and '89 when we get the merger.

A. Okay. Then you get the merger. Then

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we move to 1992. Then the head of the Washington office is transferred to Brussels.

09:31:16 Q. Who is that?

A. David Greenberg.

09:31:20 Q. Was he the head of the office when you started in '85?

A. No.

09:31:26 Q. Who was, do you know?

A. A man named Gene Knorr.

09:31:32 Q. How long had Greenberg been the head in 1992, do you know, just roughly?

A. I'd say about three years.

09:31:38 Q. He's transferred to Brussels?

A. Yes.

09:31:40 Q. And you're made the head of the office?

A. Yes. So my title changes and I then have the responsibility of not just tobacco, but also food, beer, the food and beer units.

09:32:00 Q. Is tobacco still the principal responsibility?

MS. ROBBINS: When you're talking about still, what point are you talking about?

32:08 Q. Good point. In 1992 when you become

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the head of the office, is tobacco still your principal responsibility?

A. Well, I would say there is more activity on tobacco that there would be in Washington on food and beer issues, so in that way I would say I did more work on tobacco.

09:32:28 Q. Once you become the head of the Washington office, does the counterpart you have with RJR, does that person change?

A. Yes.

09:32:36 Q. Who is it?

A. Although I don't think there's an equivalency. RJR's head of their office is a guy named B. Oglesby.

09:32:50 Q. And once you became the head of the Washington office, vice president -- what's the actual title, vice president and?

A. I think it was like government affairs or government relations, something like that. I have to look it up.

09:33:10 Q. You became an officer?

A. Government affairs.

09:33:14 Q. Government affairs. That position is a position that is an officership in the company?

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A. Yes.

09:33:22 Q. And you also attended executive committee meetings of the Tobacco Institute --

A. Yes.

09:33:26 Q. -- on behalf of Philip Morris?

A. Yes.

09:33:34 Q. How regularly did the executive committee meet, do you remember?

A. I think it was a quarterly meeting.

09:33:58 Q. How knowledgeable are you about how cigarettes are made by Philip Morris?

MS. ROBBINS: I object to the form of the question. You can answer.

A. I've been taken through the manufacturing process by the manufacturing experts on a few occasions.

09:34:20 Q. Do you know when the first occasion was when you actually went on a tour? I take it of the Richmond facilities, is that where you were?

A. Yes.

09:34:28 Q. When did you first do that?

A. I think maybe quite a long time ago. Maybe in 1985.

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09:34:34 Q. In order to understand how Philip Morris manufactured cigarettes?

A. Yes, generally.

09:34:40 Q. Did you think you had just a general understanding after that?

A. As general as anyone could have after going through it one time.

09:34:52 Q. Have you visited on more than one occasion?

A. Yes.

09:34:54 Q. When's the next time?

A. Maybe in the early nineties.

09:35:14 Q. Let me just quickly ask you your involvement and sort of sign posts along the way here just so I can know where I'm going. How involved were you in responding to any of the inquiries that Day One made of Philip Morris in February of 1994 leading up to the story at issue in this case?

MS. ROBBINS: I'll object to the form of the question. Phrased that way it's just a difficult question to answer. How involved were you, do you mean very, a little, a lot, not at all?

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MR. PAYTON: That's what I mean, very, a little, a lot, not at all.

A. Could you repeat the question.

09:35:54 Q. In February of 1994, I believe the first document that we have that reflects a contact is February 4. So starting in early February of 1994 Day One made inquiries of Philip Morris in connection with the story that runs eventually on February 28th?

A. Mm-hmm.

09:36:16 Q. And there is a series of communications back and forth that leads up to the story. I want to know what your involvement was in those communications, just generally, so I can see how involved you were. Do you know?

A. Yes. I was not involved in the media contacts at all. I was involved I assume in reviewing statements that might go out.

09:37:00 Q. It's my understanding that you were involved in reviewing statements that might go out because of concerns about either regulation or legislation of the tobacco industry that may have been implicated in this kind of story; is that your understanding?

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MS. ROBBINS: Is that your characterization of prior testimony?

MR. PAYTON: It is.

MS. ROBBINS: I'm not sure that you're characterizing it correctly. You could just ask her the question generally.

MR. PAYTON: Sure.

09:37:30 Q. Why do you think you were involved?

A. Well, I think the subject matter would potentially impact the legislative and regulatory arena in Washington, and so it was logical at some point for someone to bring me into the process.

09:37:54 Q. Things that may impact on regulation or legislation that affects the tobacco industry, that's sort of your beat; is that fair?

A. Yes.

09:38:10 Q. And once the story runs, there are a series of statements that Philip Morris issues. Were you involved in the March 1 statement or the March 7th statement or the series of statements? I'm not asking you specifically about these, I just want to know what your general involvement is. Do you remember?

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MS. ROBBINS: Did you have anything to do with these statements, that's his question.

A. I don't remember.

09:38:38 Q. There is in early March a letter that Mr. Campbell sends to members of Congress. I think it's dated March 2nd. Do you recall that?

A. Yes.

09:38:48 Q. By the way, did you review that in preparation for this deposition?

A. Yes.

38:56 Q. And did you play a role in drafting that letter?

A. That I cannot recall.

09:39:02 Q. There were other statements. Mr. Parrish had a statement around this same time period. Do you recall reviewing that in connection with --

A. No.

09:39:12 Q. You didn't review that?

A. I don't recall reviewing that.

09:39:14 Q. Do you recall if you played any role in a statement that Mr. Parrish would have issued?

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MS. ROBBINS: Do you know what statement he's referring to?

THE WITNESS: No.

MS. ROBBINS: It's a little hard, not putting it in front of her, to ask her if she played a role in a document she doesn't have in front of her.

09:39:30 Q. You don't recall playing any role in a statement that Parrish issued?

A. No.

09:39:36 Q. There was some communication between Philip Morris and the FDA that resulted in a visit by the FDA to Philip Morris that would be later in March. Do you recall that?

A. Yes.

09:39:50 Q. Did you play a role in trying to arrange that visit?

A. No.

09:39:52 Q. Did you go on the visit?

A. No.

09:39:58 Q. There were hearings before Congress at which a number of Philip Morris persons appeared and testified. I'm sure you're familiar with that?

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A. Yes.

09:40:08 Q. Did you play a role in that?

A. Yes.

09:40:10 Q. Did you arrange for those appearances?

A. No.

09:40:14 Q. Did you work on any draft testimony, statements?

A. I would have in the normal course of my job reviewed draft testimony.

09:40:24 Q. Do you recall reviewing these specific statements?

A. No, I don't recall specifically.

09:40:34 Q. How often had Mr. Campbell appeared before Congress?

MS. ROBBINS: Up until this time?

09:40:40 Q. Let's say since you were the head of the Washington office in 1992 up to the spring of 1994, had he ever appeared?

A. Not to my knowledge.

09:40:52 Q. This is the first time?

A. This is the first time.

09:40:56 Q. Had Ms. Ellis, a scientist, do you know who she is?

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Linehan

A. Yes.

09:40:56 Q. Do you know if she had ever appeared in that same time frame?

A. It's my understanding this would be her first time.

09:41:04 Q. And Mr. Burnley, who I believe also appeared, do you know who he is?

A. I know of him, yes.

09:41:08 Q. Do you know if he had ever appeared?

A. No, I think this would be his first time.

11:22 Q. Who else in your office works on things like -- let's just be specific, who else would have worked on these statements and these appearances in the spring of 1994 by the Philip Morris persons I just described, Mr. Campbell, Mr. Burnley and Ms. Ellis?

A. David Nicoli.

09:41:42 Q. Who is he?

A. He's -- I'm not sure what his title is, legislative counsel or something like that. And one of his responsibilities is -- would be working with me.

2:00 Q. How long had he been at the

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Washington office?

A. Maybe he's been there as of today, I don't know, three years. I'm not sure.

09:42:12 Q. Did you hire him?

A. Yes.

09:42:20 Q. Anyone else besides Mr. Nicoli?

A. To do what?

09:42:24 Q. To work on the testimony?

A. No. That would be it.

09:42:30 Q. Do you remember playing any role in answering interrogatories or document requests, discovery requests in this case on behalf of Philip Morris?

A. I didn't have a role.

09:42:50 Q. Did you play any role in the complaint that was filed by Philip Morris in this case?

A. No.

MS. ROBBINS: A motion for judgment.

MR. PAYTON: Motion for judgment. The amended motion for judgment.

09:43:10 Q. Were you responsible for searching any of your files in connection with discovery in this case?

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Linehan

A. No.

09:43:16 Q. Do you know if your files were searched?

A. Yes, I assume they were searched.

09:43:20 Q. Do you know it or do you assume it?

A. Well, I have to know it since my files were taken.

MR. PAYTON: Would you mark this as Exhibit 2.

(Defendants' Linehan Exhibit 2 for identification, memo, to distribution, from Ms. Linehan, production numbers PB 114315 through PB 114323 and 2023228560 through 2023228568.)

09:44:18 Q. Ms. Linehan, I've just had placed in front of you a document that's marked Linehan 2 and it's a multipage document that has as a cover sheet, a transmittal page dated August 17, 1993. It's from you to a list of persons and it attaches a memo from you and then a couple of letters. The first letter is a letter to the Honorable Ron Wyden, W-y-d-e-n, and it's from Walter R. Dowdle, D-o-w-d-l-e, who is at the Department of Health & Human Services.

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And the second letter is a letter from Ron Wyden and Michael Huffington, members of Congress, to the Honorable Donna Shalala, the secretary of HHS, dated April 21, 1993. The first letter is dated July 22nd, 1993.

Now, this has production number PB 114315 through PB 114323, and Philip Morris numbers 2023228560 through 2023228568.

Do you recognize this?

A. Do I recall this? No.

09:45:58 Q. You don't have a present recollection of this?

A. No.

09:46:00 Q. You don't deny that it's something that you would have generated?

A. No. Obviously I did.

09:46:14 Q. Why don't you take a minute and look at it so that you can refresh your recollection as to what the subject matter of your memoranda and the letter is.

MS. ROBBINS: It's a multipage document. You want her to read the entire document?

6:26 Q. Just take a look at it. I think

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you're going to recognize this once you take a look at it. That's all I want you to do. Do you generally remember the subject matter here?

A. Very generally.

09:47:48 Q. I take it you didn't review any of these documents in connection with preparing for this deposition?

A. No.

09:48:04 Q. The subject matter, just tell me if I have this right or wrong, seems to derive from the requirement that tobacco companies submit ingredient lists to HHS on an annual basis?

A. Yes.

09:48:18 Q. What was supposed to be on the ingredient list?

A. Actually, I don't know what the statutory language states so I can't be very precise.

09:48:32 Q. Okay. Did you have a general understanding of what's supposed to be on the ingredient list?

A. Generally ingredients in the tobacco.

09:48:40 Q. Did you ever see the ingredient list?

A. No.

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Linehan

09:48:42 Q. Did you play any role in the submission of the ingredient list?

A. No.

09:48:46 Q. Or the coordination of the ingredient list?

A. No.

09:48:48 Q. Did you play a role with respect to the legislation that placed the requirement on tobacco companies to submit the ingredient list?

MS. ROBBINS: I'll object to the form of the question. I don't know what you mean by play a role, but.

09:49:04 Q. Was that one of the things you dealt with when you were at Philip Morris, dealing with the legislation that --

A. Not that I recall. I think the statute was prior to my joining Philip Morris.

09:49:38 Q. I think it's -- okay. Is it your understanding that the submission of the list was to be treated confidentially by HHS and the persons at HHS that received it?

A. Yes.

09:50:10 Q. I'm looking at the second page of the exhibit which is a memo from you dated August 17,

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Linehan

I assume 1993, to, and it says distribution. Do you see that?

A. Yes.

09:50:24 Q. And it's "Re congressional inquiry/HHS response to ingredients."

A. Mm-hmm.

09:50:30 Q. I'm just going to read the first two sentences and then ask if that refreshes any recollection you have: "Attached is a letter from Representative Ron Wyden to HHS and the HHS response regarding the ingredient list filed with HHS. It is the first document I have seen which details exactly what HHS has done, revealing an NCI review of selected ingredients and that 13 ingredients which are outside the FDA approved list with five classified as hazardous substances."

Do you know what that's referring to, those two sentences? What's NCI?

A. National Cancer Institute. I assume the two sentences are referring to the attachments.

09:51:22 Q. Okay. Do you remember if you were trying to, you on behalf of Philip Morris were

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Linehan

trying to learn what HHS had been doing with the ingredient list?

A. I don't understand.

09:51:36 Q. Well, it says "It is the first document I have seen which details exactly what HHS has done." Do you see that?

A. Yes.

09:51:46 Q. I take that to mean has done with what's on those ingredient lists. Am I right about that?

A. I just don't know.

51:58 Q. You don't remember what you were intending when you wrote that sentence?

A. No.

09:52:14 Q. It goes on, "The letter invites changes to the law by claiming that no risk analysis could be done without more specificity on 'either the amount of ingredients used or the specific brand in which they are used.' As soon as we get the attachments we will send them to you." Do you recall what those two sentences are about?

A. Well, only very generally.

2:40 Q. Okay.

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Linehan

A. That, very generally, Congressman Wyden would have liked to pass legislation which would have asked us to disclose ingredients on a brand by brand -- in a brand-by-brand way.

09:53:16 Q. That was a concern to Philip Morris?

A. I would assume it would be a concern with regard to trademark and form, you know, formula problems.

09:53:30 Q. What would the trademark and formula problems be if all of this were submitted on a confidential basis like all the other ingredients?

A. I really couldn't speculate on what would happen.

09:53:44 Q. Do you remember if you ever got the attachments that are referred to in the last sentence?

A. No, I don't.

09:53:56 Q. The next paragraph reads, "Wyden's Small Business Subcommittee on Regulation Business Opportunities and Technology has broad but marginal legislative authority which in this instance treads on Dingell/Waxman's committee. We will make sure our friends on Wyden's

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subcommittee are aware of his new area of interest."

Do you recall who "our friends" is referring to?

A. No.

09:54:22 Q. And do you recall if in fact you did alert the "our friends" referred to here about Wyden's new area of interest?

A. I don't recall.

09:54:40 Q. Were these letters viewed as a threat to the tobacco industry?

MS. ROBBINS: The attached letters, is that what you're referring to?

MR. PAYTON: Yes, yes.

A. I don't remember.

09:54:52 Q. You don't remember?

A. No.

09:55:08 Q. Would you go to the first letter, that's the letter from Walter Dowdle to Representative Wyden dated July 22nd, 1993, and let's just go to the last page of the letter, Page 4. The next to last paragraph reads, "The Comprehensive Smoking Education Act." By the way, are you familiar with that act, the Smoking

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Education Act?

A. Not --

09:55:48 Q. Not specifically?

A. Not specifically, no.

09:55:50 Q. This is the act that requires the submission of the ingredient list, do you know that?

A. No, I don't know that. But --

09:56:04 Q. Okay. "The Comprehensive Smoking Education Act stipulates that cigarette ingredient information provided to HHS should be treated as trade secret or confidential information subject to Section 552(b)(4) of Title 5, United States Code, Section 1905 of Title 18 of United States Code. The enclosed information is being provided in accordance with provisions which authorize HHS to provide requested cigarette ingredient information to duly authorized committees and subcommittees of the Congress. We trust to your sound judgment the further protection of the confidentiality of this information."

Do you know how you came to be in possession of this letter?

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A. No, I don't remember.

09:57:06 Q. Did you get anonymous materials when you were the head of the Washington office? I mean this came from somewhere?

A. I know it must have come from somewhere, I just don't remember.

09:57:20 Q. Would your files allow you to identify how you obtained this document?

A. I doubt that unless it's indicated on the document.

09:57:34 Q. If you got this document from someone, wouldn't you want to be able to go back and try to get another similar document from this person?

A. I don't understand the question.

09:57:46 Q. How could you not want to know how you obtained this document?

MS. ROBBINS: I object to the question. I don't know what you expect her to answer. She's given you the information she has about the document, John.

09:57:56 Q. You don't remember at all how you got this document?

A. No, I don't.

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Linehan

09:58:00 Q. How about the second document, April 21, 1993, a letter from Representative Wyden and Representative Huffington to Secretary Shalala, do you see that?

A. Yes.

09:58:14 Q. Do you remember how you obtained this document?

A. No, I don't.

09:58:38 Q. Let me ask this: Do you remember if you had sources within HHS that provided documents or other information to Philip Morris when you were the head of the Washington office?

A. Could you repeat the question.

09:58:50 Q. Sure. Do you remember if Philip Morris had sources within the Department of Health & Human Services that provided Philip Morris with information or documents that related to tobacco?

A. I don't recall one way or the other.

09:59:08 Q. Do you remember if you had sources in the Congress, either members or staff that provided information, confidential information to Philip Morris?

A. What do you mean by confidential

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information?

09:59:28 Q. Well, such as the first letter which says by its very terms that it is confidential, protected by some reference to statutes and should be treated as confidential?

A. Well, this is probably an unusual case then.

09:59:44 Q. Okay, it's an unusual case. Do you remember if you had sources either in Congress or on their staff that would provide to Philip Morris confidential information or documents relating to tobacco?

A. No.

10:00:14 Q. Do you remember if you received this document or if someone else on your staff received the document and gave it to you?

A. I don't remember anything about the receipt of the document.

10:00:26 Q. Do you remember any response you may have received to your memo to Mr. Bring, Campbell, Carchman, Charles, Daylor, Fuller Houghton, Merlo, Parrish, Wall or Widby?

A. No, I don't.

10:00:42 Q. Who is Jerry Widby, by the way?

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Linehan

A. Jerry Widby is in Richmond in R&D.

10:01:08 Q. Do you know why this document is stamped highly confidential?

MS. ROBBINS: You mean the bottom stamp?

MR. PAYTON: Yes.

MS. ROBBINS: Does she know why?

MR. PAYTON: Yes.

A. No. Why? I don't know.

MS. ROBBINS: Then just say I don't know.

MR. PAYTON: Do you know why, Barbara?

A. No, I don't know.

MR. PAYTON: I was switching here. Barbara, do you know why it's been marked highly confidential? This shouldn't be marked highly confidential, should it?

MS. ROBBINS: We can discuss that later if we want to.

MR. PAYTON: That's fine.

10:01:58 Q. Do you know if the Department of Health & Human Services ever asked Philip Morris for more specificity regarding ingredients so

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that they could do some of the studies that are mentioned in the first document?

A. I don't know specifically.

10:02:44 Q. And you don't recall receiving any of the National Cancer Institute reviews that are mentioned --

A. No.

10:02:50 Q. -- in the first letter?

A. No.

10:02:58 Q. Whether you recall reviewing them, do you know if Philip Morris received them?

A. I don't know.

(Defendants' Linehan Exhibit 3 for identification, multipage document dated May 18, 1993, production numbers PB 112356 through PB 112388 and 2021183134 through 2021183166.)

10:04:12 Q. Ms. Linehan, I just marked as Linehan Exhibit 3 a multipage document that is dated May 18, 1993. It has from you a fax transmittal page, on the front, from you to Steve Parrish and Chuck Wall and it is transmitting a series of documents, looks like a draft bill, a document from the American Heart Association, another

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document from the American Heart Association, another document from the American Heart Association. It has production number PB 112356 through PB 112388, Philip Morris production 2021183134 through 2021183166.

Do you recall this?

A. Do I recall this document?

10:05:18 Q. Yes.

A. I reviewed it yesterday.

10:05:22 Q. Okay. You reviewed this entire document?

A. Well, I looked at it.

10:05:24 Q. That's all I mean.

A. Yeah.

10:05:30 Q. This is one you said you saw a couple of --

A. Yes, legislation.

10:05:34 Q. Right. Proposed bills?

A. Yes.

10:05:48 Q. Do you recall the Coalition on Smoking or Health documents that are attached to this, the American Heart Association Coalition on Smoking and Health?

A. You mean did I recall this?

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Linehan

10:06:00 Q. Do you recall it now that you --

A. No. I mean --

MS. ROBBINS: You have to let him finish his question so you can answer.

A. Oh.

10:06:08 Q. That in 1993 you had received these and sent them on to Mr. Parrish and Mr. Wall?

A. No, I don't have a specific recollection that I did that.

10:06:18 Q. Is there a reason why they were sent to Mr. Wall and Mr. Parrish as opposed to what the previous document list of distribution was to Mr. Campbell, Carchman, Charles Daylor, et cetera and not Mr. Parrish?

A. I don't know why --

10:06:44 Q. I'm sorry.

MS. ROBBINS: I'm sorry. That's incorrect. Parrish is listed.

10:06:50 Q. It went to Parrish and Wall before but it also went to seven or eight nonlawyers.

A. Mm-hmm.

10:06:58 Q. Is there a reason why this went only to lawyers?

A. Most likely because it's a copy of a

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draft bill and it would be sent up to the law department for analysis.

10:07:18 Q. Do you remember getting any feedback from this transmission to Mr. Parrish and Mr. Wall?

MS. ROBBINS: Just a moment. If you had conversations with Mr. Parrish and Mr. Wall about this --

MR. PAYTON: I'm not asking the substance.

MS. ROBBINS: You just want to know whether they got back to you in any form?

10:07:34 Q. Do you remember getting feedback from Mr. Parrish or Mr. Wall?

A. I don't recall one way or the other.

10:07:44 Q. Were you familiar with the Coalition on Smoking or Health that is issuing the attached documents?

A. Generally, yes.

10:07:50 Q. Who were they?

A. It's a group of -- it's a public interest group.

10:08:06 Q. Anti-smoking group?

A. Mm-hmm.

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Linehan

10:08:40 Q. Let me go back to the ingredient list for just a second. The ingredient list is confidential, it's secret; is that correct?

MS. ROBBINS: We have a number of lists submitted. Which --

10:08:56 Q. The ingredient list that is required by the federal statute that requires tobacco companies to submit lists of the ingredients they include in making cigarettes, that's confidential and secret, isn't it?

A. The transmission receipt is supposed to be handled in a confidential fashion, yes.

10:09:16 Q. And the list itself is confidential?

A. I presume.

10:09:20 Q. You've never seen it?

A. I've never seen it.

10:09:22 Q. And as far as you know, it's never been disclosed to the public?

MS. ROBBINS: Ob- --

MR. PAYTON: She can answer that.

MS. ROBBINS: You can answer the question. Do you know whether any of the ingredients lists have ever been disclosed to the public?

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Linehan

10:09:36 Q. No, that ingredient list --

MS. ROBINS: Which list?

10:09:38 Q. -- the one that is submitted to HHS on an annual basis, isn't it a fact that that has never been disclosed to the public?

MS. ROBBINS: In a particular year, this year in particular?

10:09:50 Q. In any year.

A. I don't think it's ever been disclosed to the public, but I recall that it's an aggregated list.

Our company did disclose our ingredients two or three years ago publicly.

10:10:20 Q. When you say it's an aggregated list, it's a list that includes all of the ingredients from all of the tobacco companies, that's what you mean by aggregated?

A. Yes.

10:10:30 Q. And separate from that, you're saying a couple of years ago, I believe this would be in 1994, Philip Morris disclosed publicly what?

A. To the best of my recollection, we disclosed publicly just the Philip Morris ingredients list, but it might have been

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something else. I just think that's what it was.

10:10:54 Q. Do you recall if it was exactly what Philip Morris contributed to the what you call aggregated list or was it some subset of that?

A. I don't know specifically. I would assume that it would be specifically what we submitted.

(Defendants' Linehan Exhibit 4 for identification, letter, to Mr. Miles, from Mr. Eriksen, dated September 27, 1993, production numbers PA 421137 to 421138 and 2023005169 through 2023005170.)

10:11:54 Q. I just handed you a copy of a document that's been marked Linehan 4, I believe, a letter dated September 27, 1993, from Michael P. Eriksen, E-r-i-k-s-e-n, to Michael Miles, who's the CEO of Philip Morris. It's two pages. There's a what looks like a received stamp on the second page, production number PA 421137 to 421138 or 2023005169 through 2023005170.

Do you recognize this?

A. Yes, generally.

10:12:46 Q. Did you review this in connection with your deposition today?

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A. Yes.

10:12:56 Q. There's some handwriting at the top that says, as I read it, K, and an abbreviation for please, "Follow up for response." Do you see that?

A. Yes.

10:13:04 Q. Are you a K?

A. I don't know if I'm K. It could have been his secretary.

10:13:10 Q. It could have been?

A. Yes.

13:14 Q. I'm asking looking at this --

A. Yes.

10:13:18 Q. -- and remembering this, do you believe you're the K he is sending this to?

A. No.

10:13:26 Q. Does his secretary's name begin with a K?

A. Kathryn.

10:13:28 Q. What do you remember about this document?

A. I don't remember anything specifically, I just remember this generally.

MS. ROBBINS: Why don't you ask a

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specific question?

10:14:02 Q. Were you familiar with Covington & Burling?

A. Yes.

10:14:04 Q. Who are they?

A. Covington is counsel to the Tobacco Institute so they act as general counsel, I guess, across the board to the industry.

10:14:18 Q. Did they also act as counsel to the tobacco companies in connection with joint obligation of the tobacco companies, for example, with respect to the ingredient list?

A. Yes.

10:14:28 Q. And things of that nature?

A. Yes, they do.

10:14:30 Q. And do they act as joint counsel in connection with responding to this specific letter?

A. I don't know. They could have.

10:14:42 Q. Did you have a relationship, did you deal with Covington & Burling?

A. On occasion.

10:15:08 Q. Do you remember any of the substance of this letter? "We consider," I'm reading the

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second sentence of the first paragraph, "We consider an 'ingredient added to tobacco' to include substances which are extracted from tobacco and then reintroduced into the product," do you see that sentence?

A. Yes.

10:15:32 Q. Do you recall the substance of that coming up in the fall of '93?

A. I just recall this generally.

10:15:46 Q. You recall generally an inquiry from?

A. From Eriksen.

15:52 Q. You just don't recall the specifics right now. Did you know it related to nicotine, is that what you --

MS. ROBBINS: The "it" being a letter?

MR. PAYTON: Yes.

A. No, I think my recollection would be that it related to ingredients and the ingredients list.

10:16:16 Q. Let me go to the last sentence of the second paragraph, "Please notify us in writing within 30 days of the date of this letter whether, one, nicotine or any other ingredients

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naturally occurring in tobacco are extracted and reintroduced and/or two, nicotine from other sources is added in the production of cigarettes." Do you remember that being the substance of the inquiry?

A. No.

10:17:02 Q. At the time of this letter, this is the fall of '93, were you familiar with the reconstituted tobacco process that Philip Morris used?

A. I've been generally familiar with the reconstituted process. I can't tell you when I became familiar with it.

10:17:26 Q. Do you know if at that time you generally knew the difference between RL and BL?

A. I can't recall.

10:17:38 Q. Were you familiar with the process that Philip Morris used to make a reconstituted tobacco in which they extracted the solubles as part of the process?

MS. ROBBINS: You're talking about this time frame now, fall of '93?

MR. PAYTON: Yes, fall of '93.

A. I don't know what time frame I became

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aware of that process.

10:18:14 Q. Do you remember what you actually visited when you visited Philip Morris manufacturing facilities in the 1980s? Do you remember going to the RL facility, Park 500?

A. No. I remember going just to the manufacturing center in the eighties. And in the latter few visits, you know, I would go for a more detailed tour.

10:18:42 Q. At this time period I'm trying to direct your attention to, September of 1993, can you remember if you knew that Philip Morris actually used reconstituted tobacco in its cigarettes?

A. I can't recall specifically one way or the other.

10:19:04 Q. And you also can't recall if you knew what reconstituted tobacco was?

A. It's very difficult for me to put a date or time on, whether it's -- maybe I knew in September of '91. I don't know.

10:19:46 Q. At this time, this is September 27, 1993, did you know if Philip Morris added nicotine in the course of its production of

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cigarettes?

A. I have never heard of us adding nicotine in the course of producing cigarettes.

10:20:10 Q. But you just didn't know one way or another?

A. I never heard of the issue.

(Defendants' Linehan Exhibit 5 for identification, three-page letter, to Michael Eriksen, from Stanley Temko, dated October 25, 1993, production numbers PA 933216, PA 933220 and PA 933221.)

?1:30 Q. I just marked as Linehan Exhibit 5 a document dated October 25, 1993, three pages. It's from Stanley Temko to Michael Eriksen, three-page letter. The pages go one, three, two. They're out of order, but you can see the order when you go through them. The production numbers are PA 933216 through PA 9332 -- there are three production numbers. PA 933216, PA 933220 and PA 933221. But this is a three-page letter.

Do you recognize this?

A. Yes.

`2:24 Q. It's the response to the September 27

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letter that was -- that I just showed you, right?

A. Yes.

10:22:30 Q. Did you review this in preparation for your deposition today?

A. Yes. I looked at it.

10:22:36 Q. Had you seen this before?

A. Yes.

10:22:44 Q. You saw it at the time that it was sent, October 1993?

A. I'm sure I did.

10:23:00 Q. What was your role in preparing this response to the September 27 letter from Mr. Eriksen?

A. To the best of my recollection, I had no role.

10:23:14 Q. Did you see the letter in draft form before it was sent?

A. I just can't remember.

10:23:20 Q. But you recall seeing it after it was sent?

A. Yes. It was in my files.

10:23:30 Q. Do you know who at Philip Morris was involved in preparing at least Philip Morris's part and the response to the September 27 letter?

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Linehan

A. I don't know specifically who would be involved.

10:23:44 Q. Was the Washington office involved?

A. No.

10:24:02 Q. Do you know Mr. Temko?

A. Yes.

10:24:06 Q. How do you know him?

A. He's a lawyer over at Covington who does a lot of work for TI.

10:24:14 Q. And have you worked with him personally?

A. Sure, over the last 10 years.

10:24:22 Q. In connection with Philip Morris matters, as distinct from Tobacco Institute matters have you worked with Mr. Temko?

A. No, usually you work with C&B when it's a joint industry matter as opposed to an individual company matter.

10:24:38 Q. Let me understand that. The Tobacco Institute is a legal entity I take it? It's a trade association whose members are the tobacco companies that operate in the United States; is that fair?

A. Yes.

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Linehan

Q. And Covington & Burling represents the Tobacco Institute?

A. Yes.

Q. This inquiry by Mr. Eriksen, the one that we saw in Exhibit 4, was a specific inquiry directed to Philip Morris Companies, Inc., correct?

A. Mm-hmm.

Q. And Covington & Burling responds to that inquiry on behalf of Philip Morris and the other tobacco companies, do you see that, the footnote at the bottom of --

A. Yes.

Q. -- Page 1?

MS. ROBBINS: The first paragraph of the letter says that "Covington has been asked by the seven cigarette manufacturers who received your letter."

MR. PAYTON: Yes.

MS. ROBBINS: Okay.

Q. So this is Covington acting on behalf of Philip Morris and the other tobacco companies?

A. Yes.

Q. Not as the Tobacco Institute, do you

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Linehan

see what I'm saying? All I'm asking you is did you have occasion to deal with Mr. Temko or Covington & Burling when they were acting in this capacity, that is acting on behalf of the seven tobacco companies, as opposed to on behalf of the Tobacco Institute, or did you make no such distinction?

A. You mean in this particular instance or generally?

10:26:16 Q. In this particular instance or in other instances when Covington acted on behalf of the seven tobacco companies, did you work with Mr. Temko?

A. Sure, I'm sure I had over the course of 10 years.

10:26:32 Q. Did you make the -- did you ever make the distinction I made between Covington acting on behalf of the seven companies and Covington acting on behalf of the Tobacco Institute, or are they one and the same to you?

A. To me it's one and the same.

10:26:52 Q. And the seven companies that are in the footnote on the first page of Exhibit 5, American Tobacco Company, Gallahan ~~Gallaher~~ -- is that

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what that says? -- Limited, Brown & Williamson Tobacco Corporation, Liggett Group, Inc., Lorillard, Inc., Philip Morris, Incorporated and R.J. Reynolds Tobacco Company, are those the members of the Tobacco Institute?

A. No. I mean Gallaher, Limited is not.

10:27:18 Q. They're not a member?

A. I don't think so. Maybe they have an associate membership. I've never dealt with them.

10:27:40 Q. Is there such a thing as an associate membership in the Tobacco Institute?

A. I think there's some -- some arrangement. People -- companies have come and gone through the years in and out of the trade association and I don't really know how it works, but even if they were out they perhaps still participated sort of as associate. So maybe that's the way Gallaher finds its way here. I don't know.

10:28:14 Q. Had you ever heard of Gallaher?

A. Actually, I just heard of Gallaher in connection to my current job. I think -- I don't even know, I think they're an overseas company.

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Linehan

10:28:28 Q. You mean at this time, October 25, 1993, you don't believe you had heard of Gallaher?

A. That I just don't know.

10:28:52 Q. Could you go to Page 2 of the letter, which is Page 3 of the exhibit. I'm going to read a sentence that's right in the center of the block at the top. It begins "The companies point out that their production," do you see that?

A. Yes.

MS. ROBBINS: What? That's page 2 of my exhibit, John.

MR. PAYTON: I said Page 2 of the letter, it's Page 3 of the exhibit.

MS. ROBBINS: It's Page 2 of my exhibit.

MR. PAYTON: Then it's --

MS. ROBBINS: Two and two.

MR. PAYTON: Mine is in the wrong order.

10:29:28 Q. Page 2 of the letter.

MS. ROBBINS: Good.

10:29:32 Q. I'll actually read the sentence, the first complete sentence and second sentence: "We

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are informed by each of the companies that none of them follows any extraction/reintroduction process (other than in the production of reconstituted tobacco sheet described below) in which they extract nicotine or any other material from the tobacco and then reintroduce it during the manufacturing process. The companies point out that the production of reconstituted sheet tobacco involves extraction of water soluble components from tobacco, formation of a tobacco cellulosic sheet and reapplication of the water soluble extract to that sheet." Do you see that?

A. Yes.

10:30:18 Q. Were you familiar -- does that ring a bell about your understanding of how reconstituted tobacco worked?

A. Yes.

10:30:22 Q. Do you think you knew that at the time?

A. I couldn't tell you if I knew it at the time.

10:30:28 Q. You think you know that now though?

A. Yes.

0:46 Q. You see the phrase that is used in

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Linehan

that second sentence I read, tobacco cellulosic sheet? Do you see that?

A. Yes.

10:30:58 Q. Were you familiar with that phrase, tobacco cellulosic sheet?

A. Yes. I am familiar.

10:31:06 Q. You're familiar now? You don't remember if you were then?

A. I don't recall if I was familiar then.

10:31:22 Q. Is that the same as a tobacco sheet?

A. It's a cellulosic sheet, sure.

10:31:30 Q. Is the answer you don't know or no?

A. I don't know if there's a technical distinction between the use of the term tobacco sheet versus tobacco cellulosic sheet.

10:31:42 Q. Okay. In the next paragraph there's a reference to one item on the company list, tobacco extracts, do you see that?

A. Yes.

10:31:54 Q. Were you familiar in 1993 with tobacco extracts?

A. Again, I can't recall one way or the other.

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10:32:00 Q. Do you know what a tobacco extract is today?

A. As a layman, very generally.

10:32:04 Q. What is it?

A. It was or is a flavoring package which contains minuscule amounts of nicotine that was used and sprayed on leaf.

10:32:56 Q. Do you know if the solubles that are extracted from the sheet in the course of the reconstituted tobacco process are also referred to as tobacco extracts?

A. I've never heard that term used.

10:33:24 Q. The next sentence, actually I'll skip to the last sentence of that same paragraph: "The quantity of nicotine indirectly added to tobacco from the use of tobacco extracts is on the order of 2.5 ppm, or less than 1/3,000 of a percent by weight of the tobacco blend." Do you see that?

A. Yes.

10:33:46 Q. It says "The quantity of nicotine indirectly added." Do you know what indirectly added is referring to?

A. Yes. I would assume because part of

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the package is tobacco itself, so it's nicotine's naturally occurring in tobacco, I assume that's why they use the term, because it's contained already, indirectly added.

10:34:12 Q. I don't think you meant to say what you said. You said "I would assume because part of the package is tobacco itself." Did you mean that?

A. My understanding is, again, I'm not an expert --

10:34:24 Q. If you don't know, you don't know. I'm just trying to -- I don't think you meant to say what you said. You said "I assume because part of the package is tobacco itself."

A. My understanding is that tobacco extracts contain flavoring and leaf. But I may be wrong.

10:34:50 Q. The next paragraph begins, "Nicotine is introduced as an indirect ingredient because of its use as a denaturant in ethyl alcohol identified on the company list as a processing aid." Do you see that?

A. Yes.

:5:12 Q. Do you know what indirect ingredient

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means in that sentence?

MS. ROBBINS: Don't guess. If you know, you should testify to what you know. If you don't know, just tell Mr. Payton you don't know.

A. I don't know.

10:35:32 Q. Were you familiar with the ethyl alcohol that's referred to in this paragraph SDA-4 in the fall of 1993?

A. Again, I don't know what I was familiar with in the fall of 1993 specifically.

35:44 Q. You don't remember one way or the other whether you'd ever heard of SDA-4?

A. I mean I had heard of it.

10:35:52 Q. Because you had seen this letter?

A. Because of this letter.

10:35:56 Q. Prior to this letter you don't recall having heard of SDA-4?

A. I can't recall.

10:36:08 Q. Go to the very last sentence on this page. It begins "The companies provide the consumer with," do you see that? It's the very last sentence. It starts --

A. Yes.

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Linehan

10:36:18 Q. "The companies provide the consumer with a consistent quality product by blending these tobacco types along with tobacco processed by proprietary methods." Do you see that?

A. Mm-hmm.

10:36:30 Q. Do you know anything about any proprietary methods of processing tobacco that Philip Morris used at that time, 1993?

MS. ROBBINS: I object to the form of the question. I don't understand what you're asking.

36:42 Q. You see the reference to --

MS. ROBBINS: Yes.

10:36:48 Q. -- processed by proprietary methods, that reference in that sentence?

A. Mm-hmm.

10:36:52 Q. Do you know if Philip Morris had any proprietary methods of processing tobacco in the fall of 1993?

A. I don't know.

10:37:06 Q. Do you know if Philip Morris made processed tobacco extract at that time?

A. Made?

37:12 Q. Processed or just tobacco extract?

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Linehan

Did Philip Morris itself manufacture tobacco extract?

A. I don't know.

10:37:40 Q. And did you know at that time, this is the October of 1993, that Philip Morris used a flavor package that contained tobacco extract that it obtained from an outside supplier in connection with at least one brand of cigarettes?

MS. ROBBINS: Did she know that in the fall of '93?

MR. PAYTON: Did she know that in the fall of '93.

A. I don't know.

10:38:06 Q. Do you remember learning that after this letter was sent? This is October 25, 1993.

MS. ROBBINS: The question is did Philip Morris use a flavor package that contained tobacco extract that it obtained from an outside supplier in connection with at least one brand of cigarettes. He's asking you whether you ever came to learn that.

MR. PAYTON: That's right.

A. I came to learn that, yes.

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Linehan

Q. When did you come to learn that?

A. That I cannot recall specifically.

Q. Do you know whether it was 1993, 1994?

A. Don't know.

Q. Do you know if it was before the Day One broadcast on February 28, 1994?

A. I don't know.

Q. Did you learn that at some point in time Philip Morris ceased using the flavor package that contained some tobacco extract that it was using in connection with at least one brand?

A. Yes.

Q. When did you come to learn that?

A. I don't know.

Q. Again, you don't know if that was before or after the February 28th, 1994 Day One broadcast?

A. Well, I would assume it was before.

Q. Why is that?

A. Because it had been discontinued.

Q. But the question is when did you learn that it had been discontinued?

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Linehan

A. Oh, I don't know.

10:39:36 Q. That may or may not have been before the Day One broadcast on February 28, 1994?

MS. ROBBINS: Your knowledge of the fact he's talking about.

A. My knowledge of the fact.

10:39:52 Q. I'm talking only about your knowledge of the fact.

A. I don't know.

(Defendants' Linehan Exhibit 6 for identification, series of letters, production numbers PA 933214 and 2025773974.)

10:40:34 Q. I've just handed you a document that's marked Linehan 6, a series of letters that begins with --

MS. ROBBINS: No.

MR. PAYTON: I see.

10:41:00 Q. -- a single letter, one-page letter dated December 10, 1993, from Michael Eriksen to Stanley Temko, production number PA 933214, Philip Morris production 2025773974.

Have you seen this letter before?

A. Yes.

1:22 Q. You reviewed this in preparation for

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your deposition today?

A. Yes, I saw this.

10:41:26 Q. Did you see this letter when it went out, December 10, 1993 or thereabouts?

A. I assume I did.

10:41:44 Q. And do you assume you did because this is exactly the kind of issue that should have come across your desk?

A. Well, I assume I did because it was in my file.

10:41:56 Q. But it is the kind of issue that would be brought to your attention, isn't it?

A. Generally.

10:42:24 Q. Do you remember being involved in any response to this letter?

A. No, I don't remember.

10:42:40 Q. The last two sentences of this letter read, "Your letter detailed a process whereby water soluble components of tobacco are extracted and then reapplied to a tobacco cellulosic sheet. Thus any components which are reapplied to this sheet constitute 'ingredients added' and must be reported to this office. We consider any failure to report such components a violation of

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the statute."

Do you remember concerns about whether or not Philip Morris may have violated the reporting statute?

A. I remember that this issue involved, you know, the ingredients provision and that's all.

10:43:52 Q. Do you have any specific recollection of talking to or meeting with Mr. Temko in connection with any response to this letter or the prior correspondence?

A. I can't recall one way or the other.

(Defendants' Linehan Exhibit 7 for identification, two-page letter, to Mr. Eriksen, from Mr. Temko, dated January 19, 1994, production numbers PA 421070 through PA 421071 and 2022997673 through 2022997674.)

10:44:48 Q. I've just handed you what's been marked Linehan 7, a two-page letter from Stanley Temko to Michael Eriksen dated January 19, 1994, production number PA 421070 through PA 421071 and 2022997673 through 2022997674.

Are you familiar with this letter?

A. Generally.

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10:45:28 Q. It's also one you reviewed in preparation for your deposition?

A. I don't remember.

10:45:36 Q. Do you remember seeing it about the time it was sent out?

A. Generally.

10:46:02 Q. The second paragraph reads, "Your letter refers to the process whereby water soluble components of tobacco are 'extracted and reapplied to tobacco sheet,' and indicates that tobacco components which are reapplied to tobacco sheet should be regarded as added ingredients for reporting purposes under the Act. As explained in my October 25, 1993 letter on behalf of the companies, the separation and recombination of water soluble material in tobacco is a continuous process. The process involves the temporary separation of water soluble components from tobacco, formation of tobacco cellulosic sheet, and reapplication of the water soluble components. The reconstitution process results in no increase in nicotine in the finished sheet." Do you remember seeing any other materials that referred to this process as

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Linehan

described at the time this letter was sent out?

A. I can't recall.

10:47:02 Q. You don't remember receiving any other materials in connection with this correspondence?

A. I just don't remember.

10:47:22 Q. And is it your understanding that this description in this letter was accurate at the time it was sent, with respect to Philip Morris?

A. I would assume it was accurate.

18:06 Q. When did you first learn that ABC's Day One was working on a story that related to nicotine and the tobacco industry?

MS. ROBBINS: John, if you're going to start a new line of questioning. I'm happy to have her answer this one. But we've been going for a bit, so can we take a break? She's welcome to answer this one, obviously.

10:48:30 Q. Why don't you answer this one and we'll take a break.

A. The best of my recollection is right now, I would say right before the broadcast.

8:40 Q. A day or two before the broadcast?

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Linehan

A. A few days before the broadcast.

MR. PAYTON: We'll take a break.

THE VIDEO OPERATOR: We'll go off the record on 10:15:20 for videotape number 1 and continue the deposition of Kathleen Linehan on videotape number 2 for June 14, 1995.

THE VIDEO OPERATOR: We're back on the record at 11:08:08 on videotape number 2 continuing the deposition of Kathleen Linehan for June 14th, 1995.

11:01:52 Q. Ms. Linehan, let's go back to the second document for just a second. Do you have that in front of you, the second exhibit, the August 17, 1993 attaching the memo and the two letters that we talked about earlier this morning, do you have that?

A. Yes.

11:02:12 Q. The memo that you sent to distribution says, "Re congressional inquiry HHS response to ingredients," do you see that?

A. Yes.

11:02:18 Q. The end of the first paragraph says "As soon as we get the attachments we will send them to you." Do you recall who you expected to

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Linehan

receive the attachments from?

A. No, I don't.

11:02:30 Q. Do you recall if it was someone in your office or someone outside your office?

A. I don't recall anything.

11:02:46 Q. Ms. Linehan, isn't this information that Philip Morris really wanted and, therefore, isn't it something that you would have tried to obtain?

MS. ROBBINS: Object to the form of your question. It's a compound question and I don't know what the "it" is. Are you talking about the attachments?

MR. PAYTON: Yes.

MS. ROBBINS: Okay. So what's your question? Are the attachments something Philip Morris really wanted to get?

11:03:14 Q. Obviously you wanted the attachments, right?

A. I don't know.

11:03:26 Q. And you're telling us you've just forgotten from whom you would be receiving these attachments?

A. Yes. This was, you know, a long time

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ago.

11:03:48 Q. Not quite two years ago. Had you ever received any other such confidential information from HHS?

A. I -- I don't know.

11:04:12 Q. You might have?

A. I don't know.

11:04:22 Q. Do you know if you received this information by lawful means?

MS. ROBBINS: Are you talking about a copy of this letter from HHS?

MR. PAYTON: Yes.

MS. ROBBINS: You're making an assumption here that somehow it was improper for Philip Morris to receive the letter. I don't know why you're making that assumption.

MR. PAYTON: I think I went over that with Ms. Linehan, but I'll do it again.

MS. ROBBINS: You pointed to a particular paragraph which --

MR. PAYTON: That's correct. I'll tell her why I think this is a concern.

11:04:56 Q. Because I pointed this out to you when I began going over this document, which is

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the next to last paragraph on Page 4. Do you see that? It begins "The Comprehensive Smoking Education Act," right there. "The Comprehensive Smoking Education Act stipulates that cigarette ingredient information provided to HHS should be treated as trade secret or confidential information subject to Section 552(b)(4) of Title 5, United States Code, and Section 1905 of Title 18, United States Code. The enclosed information is being provided in accordance with the provisions which authorize HHS to provide requested cigarette ingredient information to duly authorized committees and subcommittees of Congress."

Do you see that? Did you consider this letter confidential?

A. I don't recall.

11:05:56 Q. Did you consider the attachment to it confidential?

A. I don't recall.

11:06:00 Q. Do you know if Philip Morris obtained this letter by lawful means?

MS. ROBBINS: The question is does she know?

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Linehan

MR. PAYTON: Does she know.

A. I don't know. I don't know what you understand by lawful means.

11:06:24 Q. You don't know what lawful means means?

MS. ROBBINS: If you're asking her whether this letter was received in violation of the statute, she's already told you she doesn't know what the statute says.

MR. PAYTON: That's all I asked her.

MS. ROBBINS: If that's your question. He's asking you whether you know if this letter was received in violation of the statute. That's his question. If you know then you can answer it. If you don't know the answer to that, then say so.

A. I don't know whether this letter was received in violation of the statute.

11:06:52 Q. Do you know whether it was received in violation of any statute?

A. No.

11:07:06 Q. You transmitted this memo and the attached two letters to Mr. Carchman, Mr. Charles, Mr. Daylor, Mr. Houghton and I

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Linehan

believe they're all scientists of Philip Morris, is that accurate?

A. They're in the R&D department.

11:07:26 Q. Why did you send it to them?

A. Because they're involved with ingredients.

11:07:38 Q. Did you know that they were interested in learning exactly what HHS was trying to do with the ingredient list they had been receiving?

MS. ROBBINS: Can I hear the question.

(Requested portion of record read.)

MR. PAYTON: I'll read it.

MS. ROBBINS: I object to the form of it, but you can read it.

11:07:56 Q. Did you know that those four R&D persons were interested in learning exactly what HHS was trying to do with the ingredient list that the tobacco companies were submitting to HHS?

MS. ROBBINS: Object to the form of that.

A. I don't recall.

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Linehan

11:08:18 Q. I mean I was asking why they received your memo and the two letters and you said they were in R&D?

A. Right.

11:08:26 Q. Now I'm asking --

MS. ROBBINS: She also said they were involved with ingredients.

11:08:30 Q. Yes, they're in R&D and they're involved with ingredients.

A. Mm-hmm.

11:08:36 Q. Now I'm asking if you understood at that time that they, that's Mr. Charles, Mr. Daylor, Mr. Carchman and Mr. Houghton were interested in learning what HHS was trying to learn from the ingredient list?

A. I don't recall what I believed at the time about what they -- their activity would be.

11:09:02 Q. Why did you send it to them?

A. Because they're --

MS. ROBBINS: She already answered that question. She answered it twice.

A. They're in R&D.

11:09:10 Q. They're in R&D. Why would R&D be interested in this?

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Linehan

A. Because it has to do with ingredients.

MS. ROBBINS: Which is the answer she's now given three times.

11:09:26 Q. Do you recall discussing these two attached letters or the contents of these two attached letters with anybody at Philip Morris?

A. No, I don't recall.

11:09:40 Q. Who's Ellen Merlo?

A. Ellen Merlo at that time?

11:09:48 Q. Yes.

A. She worked for PM U.S.A.

11:09:56 Q. Do you know what her role was at PM U.S.A.?

A. She was the head of like state government relations and communications.

11:10:08 Q. Why did you send this memo on these two letters to her?

A. Because she's basically part of PM U.S.A. that would normally get something like this.

11:10:28 Q. Did you think this was going to turn into a news story or something?

A. I don't think that's why I would send

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it to Ellen.

11:10:36 Q. Then I don't understand why you sent it to her.

A. She was, you know, corporate affairs which is a generic position in PM U.S.A., and so it would often be just logical to send it to her, whether or not she had any direct dealings with the specific substance. It would be an FYI.

11:11:04 Q. Okay. An FYI to her. What does corporate affairs do?

A. Corporate affairs? It's government relations, it's media relations, it's community relations. It's kind of generic.

11:11:20 Q. And Craig Fuller, what was his position at that time?

A. Craig Fuller was senior vice president, corporate affairs, of the company.

11:11:28 Q. And he got it for the same FYI reasons?

A. Yes.

11:11:56 Q. Do you remember having any discussions with members of Congress about this correspondence between HHS and Representative Wyden and Representative Huffington?

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A. I don't remember.

MS. ROBBINS: That was asked and answered. That was the answer you gave last time.

11:12:30 Q. Okay, back to the Day One broadcast and the preparation of the Day One broadcast. You testified just before the break that you believe you got involved a few days before the broadcast; is that right?

A. Yes.

MS. ROBBINS: She can't record an answer unless you give an audible answer.

11:12:50 Q. Tell me what you recall as your first involvement in responding to the inquiries that Day One had made of Philip Morris?

A. I have really no memory on any specifics.

11:13:22 Q. Do you remember reviewing draft statements that Philip Morris was considering sending to Day One before the story went out?

A. No, not specifically.

11:13:34 Q. Do you have a general recollection of being involved in reviewing draft statements that Philip Morris was considering sending to Day One

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before the story went out?

A. Very general.

11:13:42 Q. Well what do you remember?

A. I don't remember -- I remember the promotions for the show and that's about the most vivid memory I have pre-broadcast.

11:14:04 Q. Do you remember talking to Victor Han about Philip Morris's response to Day One before the story went out?

A. No, I don't.

11:14:14 Q. You knew Victor Han at the time?

A. Yes.

11:14:16 Q. You had dealt with him?

A. Yes.

11:14:42 Q. Is your office connected to the company's E-mail system?

A. Yes.

11:14:48 Q. So you could be sent E-mails, for example, from Mr. Han?

A. Yes.

11:14:54 Q. And that was true in February of 1994?

A. Yes.

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Exhibit 8 for identification, one-page document, production number PB 118607 and 2031361000.)

11:15:32 Q. Ms. Linehan, I've marked as Exhibit 8 a one-page document that is four paragraphs. It's marked production number PB 118607 and 2031361000. Is this one of the documents you reviewed in connection with this deposition?

A. Yes.

11:15:58 Q. Do you recall reviewing it back in 1994?

A. No, I don't.

16:02 Q. Do you recall having heard the substance back in 1994?

A. I don't recall.

11:16:08 Q. In other words, was it read to you? Do you remember whether it was read to you?

A. I don't recall.

11:16:42 Q. I think I have not made the record clear here. What I'm asking is whether you believe you didn't see this document or its substance or whether you just don't recall?

MS. ROBBINS: Whether she doesn't recall one way or the other whether she's seen it? That's his question.

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11:17:02 Q. Yes, whether you don't recall one way or the other or whether you're saying I didn't see this?

A. I have no recollection of this document.

11:17:10 Q. Do you recall seeing any other drafts of statements Philip Morris was considering issuing?

A. I don't recall.

11:17:24 Q. Did you review the statement that Philip Morris actually issued on the 25th of February in preparation for this deposition?

MS. ROBBINS: I think you should show her which statement you're talking about if you want to ask her whether she reviewed a particular document.

11:17:38 Q. Well let me ask this question first. Do you recall if you saw the statement that Philip Morris actually issued before it was issued?

MS. ROBBINS: The February 25th statement?

MR. PAYTON: February 25th.

MS. ROBBINS: The problem is there

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are a number of statements in proximity to one another and I --

MR. PAYTON: That's fair.

MS. ROBBINS: I would rather her see the document.

MR. PAYTON: That's fair, that's fair.

(Defendants' Linehan Exhibit 9 for identification, memorandum, to distribution, from Mr. Han, dated February 25, 1994, production numbers PA 420358 and 420359 or 2022847057 through 2022847058.)

11:18:34 Q. I've just handed you a document that's been marked Linehan 9, a memo from Victor Han to a distribution list which includes you, dated February 25, 1994, and it attached a two-paragraph statement, production number PA 420358 ~~and~~ through PA 420359 or 2022847057 through 2022847058.

Did you review this in preparation for your deposition today?

A. Yes.

11:19:08 Q. Both the memo and the attached statement?

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Linehan

A. Yes.

11:19:14 Q. Do you recall reviewing the attached statement before it went out?

A. I don't recall reviewing the attached statement.

11:19:28 Q. Let me try to refresh your recollection. Do you recall participating, in the days leading up to this date, February 25, maybe the 24th or the 25th of February, do you recall participating in any conversations, telephone conversations, I assume, about whether or not Philip Morris should release or provide to Day One a specific response to inquiries that Day One had been making of Philip Morris? Do you understand my question?

A. Yes.

11:20:04 Q. I mean I don't have any specific recollection one way or the other of a specific phone call.

11:20:26 Q. I'll represent to you that it is Mr. Han's recollection and testimony that you suggested in the course of this two-day period to him that Philip Morris not provide a specific response to the questions, specific questions

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Linehan

that Philip Morris had put to Day One. Does that in any way refresh your recollection?

MS. ROBBINS: That's your --

A. No.

MS. ROBBINS: That's your characterization of Mr. Han's testimony.

MR. PAYTON: That is my characterization.

MS. ROBBINS: You can answer the question. But that's your characterization and I might take issue with your characterization. You can answer the question.

A. The answer is no.

11:21:04 Q. You don't remember that at all?

A. No.

11:21:06 Q. Or anything resembling that?

MS. ROBBINS: Anything vaguely like that?

MR. PAYTON: Yes.

11:21:12 Q. I mean I'll get the testimony and read it to you but I think I'm fairly characterizing Mr. Han's testimony that he recalls that you suggested that Philip Morris not issue a specific response to the Day One

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Linehan

queries. You don't recall that at all?

A. I don't recall that at all.

MS. ROBBINS: One way or the other?

THE WITNESS: One way or the other.

11:21:36 Q. He also testified that he had prepared such a specific response to the Day One inquiries.

MS. ROBBINS: The reason I'm quarreling, John, he certainly testified he had prepared a draft of the February 25th statement and it did include more information including some specifics. But I don't want to get into a battle with you over exactly what he said.

MR. PAYTON: I'm not.

MS. ROBBINS: Because I --

11:21:58 Q. He testified that he prepared a specific response, a response that contained specifics that related to the inquiries Day One had made, and that he recalls discussing whether or not that should be sent to Day One with you. You don't remember that at all?

A. I just don't remember one way or the other, no.

22:38 Q. Did you know who Dr. Dunne was --

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Linehan

is?

MS. ROBBINS: Thank you.

A. Is.

MS. ROBBINS: Since you want to notice his deposition, I hope he is.

11:22:46 Q. Do you know who Dr. Dunne is?

A. He's an R&D person I think.

11:22:54 Q. Have you ever met him?

A. No.

11:22:58 Q. Did you know who he was in February of 1994?

A. I don't know.

11:23:10 Q. Did you know before the broadcast what Day One had asked of Philip Morris in the way of providing answers to queries or information?

A. As I said, I can't recall.

MS. ROBBINS: You can, you know, show her the document if you want to and ask her if she remembers anything about it. You're welcome to do that.

11:23:38 Q. I take it you never received an E-mail that contained the specifics that Day One was asking about with respect to Philip Morris?

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Linehan

MS. ROBBINS: An E-mail containing a question track by Day One, I would agree that that's --

MR. PAYTON: No, it's more than a question track.

MS. ROBBINS: Why don't you show her the document so we don't argue over how to characterize the document.

MR. PAYTON: If she hasn't seen it, I'll read her the that part of it. ~~document.~~

11:24:04 Q. I take it you haven't seen the E-mail? Or did you see the E-mail in connection --

MS. ROBBINS: How can she know what you're talking about if you don't show her the document?

MR. PAYTON: Well, she can recognize this.

11:24:16 Q. Did you review E-mails related to this story in connection with your deposition?

A. Yes.

11:24:22 Q. You did. Had you seen those E-mails before you prepared for this ~~the~~ deposition?

A. Not that I recall. Most of the E-mails were not to me.

(Defendants' Linehan

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Exhibit 10 for identification, compilation of E-mails, production numbers PA 426904 through PA 426912A and of 2024015018B through 2024015027.)

11:25:04 Q. Ms. Linehan, I've handed you or you've been handed an exhibit that's been marked Linehan 10, which is a compilation of E-mails that were compiled I believe by Brendan McCormick, and they go not necessarily in order, but there's a compilation of them that we're all now fairly familiar with. The production number is PA 426904 through PA 426912A and it has Philip Morris production numbers of 2024015018B through 2024015027.

Is this the set of E-mails that you reviewed in preparation for your deposition, do you know?

A. I would assume. I'm not sure every single one of them, but yes.

11:26:14 Q. Let me ask if you would go to --

MS. ROBBINS: Pages 7 to 8.

11:26:22 Q. Page 7 to 8, that's correct, seven to eight marked in the upper right-hand corner.

MS. ROBBINS: Start at the bottom of Page 7.

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Linehan

11:26:28 Q. You'll see at the bottom of Page 7 an E-mail that is dated February 24 from Karen Daragan to Victor Han and others. Do you see that?

A. Yes.

11:26:36 Q. Do you recall reviewing that in preparation for this deposition?

A. Yes.

11:26:42 Q. Okay. Do you recall if you were aware of any of that information on the 24th or 25th of February 1994?

A. No, I don't recall.

11:26:56 Q. You don't recall. It's not that you weren't aware of it, you just don't recall?

A. I have no memory on this E-mail or on the substance.

MS. ROBBINS: She's not a recipient on the E-mail, you can see that.

MR. PAYTON: No, no, I showed her the E-mail because I did not --

MS. ROBBINS: That's fair. I'm saying she's not listed as a recipient on the E-mail.

11:27:30 Q. Do you remember anything about SDA-4

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Linehan

in connection with the Day One broadcast? before it ran

A. No.

MS. ROBBINS: Now wait a minute, in this time frame, now? What are you asking her?

11:27:40 Q. In the time frame of February 1994?

MS. ROBBINS: Does she remember now about what she knew about SDA-4 somewhere around February 24th, is that the question?

MR. PAYTON: Does she remember that the issue of SDA-4 was an issue that Day One was inquiring about in February 1994.

MS. ROBBINS: Do you independently recall that ~~is his question.~~

A. I don't independently recall that.

11:28:26 Q. Go back to the February 25 statement which is Exhibit 9. What exhibit is that, by the way? Nine?

MS. ROBBINS: Is it nine? Take a look at the blue tab on the front.

A. Yeah, it's nine.

11:28:48 Q. Do you recall receiving this after it was -- you know, it's fax'd out and you're on the distribution list.

A. Yeah, well then I --

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Linehan

11:28:54 Q. Do you recall receiving it?

A. I don't remember receiving it, but it's obviously I received it because it's in my file.

11:29:02 Q. Is this now a document, the two-paragraph statement, that you recall seeing when it went out? I understand you don't remember the discussions or content that was discussed before this statement was issued. Do you remember receiving and reading the statement once it was issued?

MS. ROBBINS: Do you recall today as you sit here, having received the statement after it went out, that's his question.

A. No, I don't recall.

11:30:22 Q. Do you remember watching the --

(Defendants' Linehan Exhibit 11 for identification, multipage document, production numbers PA 100332 through PA 100338 and 2023913510 through 2023913516.)

MS. ROBBINS: Is there a question?

MR. PAYTON: Strike the last question. NEW QUESTION

30:36 Q. Ms. Linehan, I've just handed you a

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document that's been marked Linehan ~~Exhibit~~ 11, a multipage document that has as its first page a fax cover sheet from David Nicoli to Victor Han, and it is a retransmission of a fax from Covington & Burling, David Remes, to David Nicoli, and then it encloses as the last document, it encloses an unsigned copy of a letter from David Kessler, FDA commissioner, to Scott Ballin, and the two pages prior to it are a retyped version of the last document. I'll just represent that to you. The fax page says that, the second fax page. It has production number PA 100332 through PA 100338 or 2023913510 through 2023913516.

Do you recall receiving this?

A. No.

11:31:54 Q. Did you review this in preparation for your deposition?

A. Just the text of the letter.

11:32:06 Q. Did you review some parts of this exhibit or simply -- have you seen any parts of this exhibit before?

A. Just the text, this.

2:16 Q. Do you recall seeing the third page

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Linehan

and the fourth page?

A. The --

MS. ROBBINS: Which page?

A. Oh?

MS. ROBBINS: Wait a minute. There's confusion over which pages. You can show Mr. Payton if you want which pages you saw in preparation.

11:32:30 Q. Which pages do you recall seeing?

A. I just recall seeing this page.

11:32:36 Q. Which is the two pages that start at the top, "(Text of letter from Kessler, FDA Coalition on Smoking or Health)," you recall seeing that at the top?

A. Yes.

11:32:46 Q. You recall seeing that page and the next page?

A. Yes.

11:33:04 Q. The date at the top of this, all of this, is February 25. There are a couple of fax lines at the top, do you see that, February 25, 1994?

A. Yes.

33:12 Q. And time and another February 25

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different fax line. Do you see those?

A. Yes.

11:33:18 Q. Do you recall receiving these on that day? February 25 was a Friday.

A. Do I recall? No.

11:33:22 Q. Yes.

A. No.

11:33:24 Q. You don't remember the exact day?

A. I don't recall receiving this.

11:33:28 Q. I see. What you reviewed was simply in preparation for your deposition?

A. Yes.

11:33:38 Q. David Nicoli is the legislative counsel I think you --

A. Yes, Nicoli.

11:33:42 Q. Who worked for you?

A. Yes.

11:33:48 Q. Is it likely that he would have provided you with a copy of this at the time?

A. Yes, it would be likely he would.

11:33:58 Q. The two pages you say you did review, would you go to the second page. There's some writing at the bottom. Do you recognize that writing?

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Linehan

A. No, I don't.

MS. ROBBINS: She didn't say that she reviewed a page that has that writing on it. There are numerous copies of this that have been produced, John, or at least more than one copy that's been produced.

MR. PAYTON: I just asked if she --

MS. ROBBINS: Okay. For your information because she wouldn't be aware of the fact that more than one copy of this has been produced.

34:36 Q. Now, the second fax pages indicates that this -- I'll just read it, the message on the second fax page, the second page of the document I'm going to read. Not that page. Turn back one page. Turn back one page.

A. Oh, this. The cover sheet?

11:34:54 Q. Yes, the cover sheet from Covington & Burling from David Remes. The message says, "Attach is the FDA letter that B. Dawson receives. There is also attached a clean version which she retyped." Do you know who B. Dawson is?

A. Brennan Dawson.

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Linehan

11:35:12 Q. Who's that?

A. The media spokesman for the Tobacco Institute.

11:35:22 Q. Do you now remember that later that same day, February 25, David Kessler, the FDA commissioner did issue this letter and release it publicly to Scott Ballin?

A. Do I remember?

11:35:36 Q. Yes.

A. That he did that that day?

11:35:38 Q. Yes, do you remember it now, yes.

A. No.

MS. ROBBINS: She also hasn't read the letter and compared it with the version that's in this packet. So when you say this letter it makes it a little difficult.

11:36:08 Q. Well I'm willing to refer to this as a draft letter or version of the letter. It's certainly unsigned what's in here, correct?

A. Yes.

11:36:18 Q. Do you recall ever receiving any other draft letters from the FDA commissioner before they were sent out?

A. No, I don't recall.

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Linehan

11:36:34 Q. Did you ever inquire of anyone as to how Brendan Dawson came to be in ~~position~~ possession of this draft FDA letter?

A. No, I don't recall inquiring.

11:36:46 Q. Did you ever learn how Brendan Dawson came to be in possession of this draft FDA letter?

MS. ROBBINS: Brennan Dawson?

A. Brennan?

11:37:00 Q. Brennan Dawson.

A. I have no knowledge of that.

11:37:10 Q. The answer is no, you never did learn how Brennan Dawson came to be in possession of this draft FDA letter?

A. No, I don't know how Brennan received it.

(Defendants' Linehan Exhibit 12 for identification, three-page letter, to Scott Ballin, from David Kessler, dated February 25, 1994, production numbers PA 933217 through PA 933219 and 2025773977 through 2025773979.)

11:38:12 Q. You've just been handed what's been marked as Linehan 12, a three-page letter from

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David Kessler, Commissioner of Food and Drugs, to Scott Ballin, dated February 25, 1994, production number PA 933217 through PA 933219 or 2025773977 through 2025773979.

Have you seen this letter before?

A. Yes.

11:38:46 Q. When did you first see this letter?

A. I'm sure I saw this letter back in February of '94.

11:39:16 Q. Do you remember having discussions on February 25, 1994 regarding this letter?

A. No, I don't remember specific discussions regarding that letter.

11:39:28 Q. No I'm just asking if you remember having discussions about this letter?

A. No, I don't.

11:39:56 Q. The letter begins with, the first sentence, "As you know, the Food and Drug Administration, FDA, has before it several petitions from the Coalition on Smoking or Health seeking to have FDA regulate low tar and low nicotine cigarettes and denicotinize cigarettes as drugs." Were you aware of that?

A. Aware of?

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Linehan

Q. The petitions?

A. The petitions.

Q. That were before the FDA at that time?

A. Yes.

Q. Let me go to your understanding of the FDA's jurisdiction as it relates to cigarettes. Do you see the fourth paragraph which starts on the first page, "Under the Act"? Do you see that?

A. Yes.

Q. "Products are subject to regulation as drugs based on the intent of the product vendor. If the vendor intends that a product be used as drugs (for therapeutic or diagnostic use or to effect the structure or function of the body) FDA may regulate them as drugs." Was that Philip Morris's understanding of the FDA's jurisdiction as well?

MS. ROBBINS: Are you asking for a legal conclusion?

MR. PAYTON: No, I'm asking for her understanding as the person who dealt with legislation and regulation for Philip Morris.

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Linehan

A. I can't answer that. I don't -- one, I'm not an FDA lawyer, and I really don't know if Philip Morris had an official position.

11:41:48 Q. As to whether or not the FDA could regulate tobacco products as drugs?

MS. ROBBINS: That wasn't your question, as to whether the FDA could. Your question related to reading that sentence and whether that was Philip Morris's understanding.

MR. PAYTON: That's right.

A. Whether this particular sentence that's written by --

11:42:12 Q. That's right.

A. -- Dr. Kessler was the statement, the Philip Morris position?

11:42:18 Q. Did Philip Morris agree or disagree?

MS. ROBBINS: She said she didn't know.

A. I don't know.

11:42:58 Q. Do you know how you received this letter, the actual signed official copy of this letter?

A. No, I don't.

13:26 Q. Turn the page to Page 2 of the

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Linehan

letter. I'm at the paragraph that begins, "Evidence brought to our attention," do you see that?

A. Yes.

11:43:34 Q. "Evidence brought to our attention is accumulating that suggests that cigarette manufacturers may intend that their products contain nicotine to satisfy an addiction on the part of some of their customers. The possible inference that cigarette vendors intend cigarettes to achieve drug affects in some smokers is based on mounting evidence we have received that: 1. The nicotine ingredient in cigarettes is a powerfully addictive ~~agents~~ agent and 2. Cigarette vendors control the levels of nicotine that satisfy this addiction."

Do you remember if when you received this this was new information to you, or did you know that FDA was in fact looking into these matters and considering the conclusions that it reaches here? Were you aware of their ongoing investigation?

MS. ROBBINS: Into the issues listed you just read in that paragraph?

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Linehan

MR. PAYTON: Yes.

MS. ROBBINS: At the time you received the letter did you understand that the FDA had an ongoing investigation into these issues?

MR. PAYTON: That's right.

A. I don't recall having any knowledge of any FDA investigation.

11:44:50 Q. Well, you knew they had received the petitions from the Coalition on Smoking or Health?

A. Yes.

11:45:00 Q. You just didn't know what they were doing in response to those petitions, is that what you're saying?

A. I don't -- the petitions were pending. I don't know whether they were linked with whatever they might have been doing otherwise.

11:45:22 Q. Did you know that FDA considered the nicotine ingredient in cigarettes to be a powerfully addictive agent?

A. Could you repeat the question.

45:30 Q. Yeah, I'm just reading from the

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Linehan

letter. Did you know that the FDA believed, and I'm reading numbering 1, that the nicotine ingredient in cigarettes is a powerfully addictive agent?

MS. ROBBINS: Did she know that prior to this letter?

MR. PAYTON: Yes.

A. No.

11:45:48 Q. The second item there which says "Cigarette vendors control the levels of nicotine that satisfy this addiction," did you know at that time, February 25, 1994, if that was true?

MS. ROBBINS: That cigarette vendors do that?

11:46:08 Q. That cigarette vendors control the levels of nicotine that satisfy this addiction?

A. I know that we do not control the level of nicotine.

11:46:28 Q. What do you mean you don't control the level of nicotine?

A. The cigarette manufacturers do not control the level of nicotine.

6:40 Q. Don't the cigarettes that Philip

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Morris manufactures have precise levels of nicotine in them?

A. Yes, but they don't control independently the level of nicotine.

11:46:52 Q. What does "don't control independently" mean? I mean the -- if we had a pack of Marlboros here it would have a nicotine --

A. That's right.

11:47:06 Q. -- number on it. What do you mean don't independently control?

A. It's my understanding that in the manufacturing process they control for the level of tar.

11:47:26 Q. Okay. How did you come to have that understanding?

A. From the R&D people.

11:47:34 Q. Do you have a specific recollection as to who would have told you that?

A. No.

11:47:42 Q. Do you also understand that the nicotine level in Philip Morris cigarettes at least follows the tar level in the Philip Morris cigarettes? Have you heard that phrase?

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A. Yes.

11:47:54 Q. Nicotine follows tar?

A. Yes.

11:47:58 Q. What do you understand that to mean?

A. That as you control for tar, nicotine follows, whatever that's supposed to mean from a technical sense.

11:48:08 Q. Did you understand it to mean that if you control for tar you also control for nicotine?

A. No.

18:16 Q. What else could it mean?

A. That you just control for tar and that the -- I mean I cannot explain why because I'm not an R&D person.

11:48:30 Q. Did you understand that if you obtained a certain tar level that because if you control for tar nicotine follows tar, you get a predictable nicotine level?

A. That's my understanding more or less.

11:49:34 Q. Is it fair to say that Philip Morris manipulates the level of tar in the cigarettes?

A. What does manipulate mean?

19:42 Q. Are you familiar with the word

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manipulate?

A. Yes.

11:49:52 Q. Okay. Is it fair to say Philip Morris manipulates the level of tar in the cigarettes?

A. I don't know.

11:50:04 Q. Is it fair to say it manages the level of tar in the cigarettes?

A. I'd say it controls.

11:50:12 Q. Okay. Are controls and manipulates pretty much the same thing?

A. Manipulates sounds very pejorative.

11:50:24 Q. What's pejorative about manipulates?

A. What's pejorative about manipulate?

11:50:28 Q. Yes.

A. It's pejorative. It's like sinister or something.

11:51:06 Q. Did you do anything as a result of the commissioner's letter dated February 25, 1994? Were you responsible for responding or talking to members of Congress or dealing with regulators?

A. Specifically?

51:26 Q. Yes.

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A. I don't recall what I specifically did after receiving the letter.

11:51:30 Q. Do you recall that you had some responsibility in connection with this letter though?

A. Yes.

11:51:38 Q. What would that generally have been?

A. Generally, it would be to get an analysis of the letter.

11:51:48 Q. And from whom would you ask for an analysis of this letter?

A. Probably the legal department and R&D.

11:52:04 Q. Do you know Mr. Daylor, Mr. Carchman, Mr. Houghton and Mr. Charles?

A. Yes.

11:52:14 Q. You had worked with them before?

A. Yes.

11:52:20 Q. Would they be the persons in R&D or the R&D persons that you would have asked to work on a response to this letter?

MS. ROBBINS: I don't believe she testified that she asked anybody to work on a response to the letter.

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Linehan

A. You asked me generally what I would have done.

11:52:40 Q. You said you would have tried to get an analysis of the letter?

A. Get an analysis, but I can't tell you whether I specifically went to R&D.

11:52:46 Q. And I said from whom and you said probably the legal department and R&D.

A. Mm-hmm.

11:52:50 Q. Okay.

MS. ROBBINS: She said analysis, not response, is my point.

MR. PAYTON: Analysis, I'll accept that.

MS. ROBBINS: Okay.

11:53:00 Q. Do you recall if you went back to Mr. Charles, Mr. Houghton, Mr. Carchman?

A. No, I don't specifically recall.

11:53:04 Q. Do you recall that you went back to someone at R&D?

A. No.

11:53:10 Q. Do you recall ever receiving an analysis of this letter from R&D?

A. No.

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Linehan

11:53:46 Q. The paragraph at the bottom of Page 2 reads, "Although technology was developed years ago to remove nicotine from cigarettes, and to control with precision the amount of nicotine in cigarettes, cigarettes are still marketed with levels of nicotine that are sufficient to produce and sustain addiction. In fact, it is our understanding that manufacturers commonly add nicotine to cigarettes to deliver specific amounts of nicotine. There is also evidence discovered in recent litigation that some individuals involved in the manufacture of cigarettes in the 1970s regarded their products as nicotine delivery systems."

Do you see that paragraph?

A. Yes.

11:54:24 Q. The first sentence, "Although technology was developed years ago to remove nicotine from cigarettes," do you know what that is referring to?

A. The technology?

11:54:38 Q. Yes.

MS. ROBBINS: She didn't write the letter.

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Linehan

Q. To remove nicotine from cigarettes.

MS. ROBBINS: She didn't write the letter, John.

MR. PAYTON: I understand that.

Q. I'm asking if you are familiar with technology that was developed years ago to remove nicotine from cigarettes?

A. No.

Q. Go back one page to the first page of the letter. There's a handwritten, this looks like a note at the top, it says FDA and actually I can't read the next little notation. Is that your handwriting, do you know?

A. Yes.

Q. Do you know what it says, FDA?

A. Work file.

Q. Oh, I see. That's how you filed this?

A. Mm-hmm.

Q. What is your FDA work file? What was your FDA work file?

A. A file.

Q. Would it have had, for example, the petitions from the Coalition on Smoking or Health

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Linehan

that are referenced in this letter?

A. It might.

11:56:58 Q. Do you know Mr. Andrade, Andy Andrade?

A. Tony Andrade.

11:57:04 Q. Tony Andrade, okay.

MS. ROBBINS: Andretti was a race car driver, John.

A. Yes.

11:57:08 Q. Who is he?

A. He's a man that works in New York. I'm not sure what his background is.

11:57:28 Q. Do you know what his function is? Was, do you know in 1994 what his function was?

A. No.

11:57:34 Q. Do you know what department he worked in?

A. No. I didn't -- I really don't know him very well.

(Defendants' Linehan Exhibit 13 for identification, memorandum, to distribution, from Mr. Han, dated February 28, production numbers PA 420356 and PA 420357 and 2022847055 and 2022847056.)

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Linehan

11:57:58 Q. Ms. Linehan, I've handed you what's been marked Linehan Exhibit 13, a February 28th memo from Victor Han to a distribution list which includes you, and attaches a statement that Philip Morris released on that day, production number PA 420356 and PA 420357 or 2022847055 and 2022847056.

Did you review this in preparation for your deposition today?

A. I don't remember.

11:58:46 Q. Do you remember receiving this statement of February 28th, 1994, or thereabouts?

A. I don't specifically remember receiving this on February 28th.

11:59:08 Q. Why don't you take a look at the statement. The statement references the FDA in the last paragraph. What I want to ask you is if you recall playing any role in the drafting or discussions that went into the production of this statement?

A. I can't recall one way or the other.

11:59:46 Q. Would it be likely that your office or you would be involved in some way?

A. Not necessarily.

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Linehan

(Defendants' Linehan Exhibit 14 for identification, index cards, production numbers PA 933131 through PA 933137 and 2025769246 through 2025769252.)

12:01:12 Q. Ms. Linehan, you've just been handed what's been marked Linehan Exhibit 14. It's a series of note cards it appears to me.

MS. ROBBINS: Index cards.

A. Index cards.

12:01:40 Q. Index cards. It's identified as production number PA 933131 through PA 933137 or 2025769246 through 2025769252.

Are these the index cards that you were referring to that you said you reviewed in preparation for this deposition?

A. Yes.

12:02:00 Q. When would you have made these? Let me ask it another way. These index cards in here, the first one I believe says addiction. The second one says denatured alcohol. The third one says ingredients. The fourth one says extract. The fifth one says nicotine. The sixth one says recon and the last one says FDA authority. Did I read all those correctly?

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A. Mm-hmm.

12:02:30 Q. Those all seem to be topics that are raised either in response to the Day One inquiries broadcast or the FDA letter. So my question is is it fair to assume that these notes were made around that time?

A. I don't know.

MS. ROBBINS: When you say that time?

12:02:54 Q. February 24, 25, 26, 27, 28, 1994?

A. I have no recollection.

03:04 Q. How would these index cards have been kept physically? In a file box? In a folder? How?

A. It would be in the file.

12:03:18 Q. In what file?

A. FDA.

12:03:22 Q. I see. So you think each of these index cards -- I see. You think the file FDA contained all of these cards?

A. I assume so.

12:03:38 Q. You believe the next card, denatured alcohol was contained in the file FDA?

A. I don't know where these cards came

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Linehan

from, so I can tell you this only because it's noted there.

12:04:12 Q. Could these be notes that you made in the course of February 24, 25, 26, 27?

A. I just don't recall.

12:04:30 Q. Please don't take offense, but I can't actually read all of the writing. So I actually want to go through these cards and actually have you just read off what's on them. The first one that has addiction, can you just read the text that's there.

A. "1988 surgeon general, 90 percent ex smokers quit without formal program. Hard drugs -- builds tolerance levels. State of consciousness altered. Nicotine more like caffeine."

12:05:04 Q. The next one which says denatured alcohol.

A. "Denatured alcohol, SDA-4, approved by BATF. Provide better taste. Use since 1951. Used as solvent for flavors."

MS. ROBBINS: Did you say bitter or better taste?

A. Oh. "Provides bitter taste. Used as

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Linehan

solvent for flavors."

12:05:30 Q. Do you think it's bitter?

A. Yes, it's bitter.

12:05:34 Q. Let's go to the next one. It says ingredients.

A. "Ingredients. 13 not included on GRAS or EAFUS list."

12:05:42 Q. Do you know what those are?

A. GRAS is generally recognized as safe. I don't know what EAFUS is.

12:05:54 Q. Would you say EAFUS is unsafe? You just don't know?

A. I have no idea.

12:05:56 Q. Okay, go ahead.

A. "Five hazardous substances, i.e., nicotine sulfate, tobacco extract, ammonia."

12:06:10 Q. The next one says?

A. "Extract: Used for 100 years. Flavoring - move 1.04 milligram nic to arrow 1.04027. Undetectable."

12:06:32 Q. The next one.

A. "Nicotine: Reduced less than 60 percent in last 40 years. 'Manipulate' must control level conform to FTC testing."

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Linehan

"Recon: Approximately 23 percent content of cigarette, 20 to 40 percent loss in processing. High in stem material. Nic - 1 percent by weight versus 2.5-4.5 leaf." Something "discussed in three surgeon generals' reports," issue or something.

"FDA authority: Intent on part of manufacturer must be shown. 1970 FDA rejected ASH petitions. 1977, 1980 courts upheld; FDA in determining intent look to claims in labels, ads of therapeutic purposes. "Imputed intent," quote, "in rare instances where product used by consumers 'nearly exclusively for a therapeutic purpose consumers' intent is imputed to manufacturer."

12:08:24 Q. None of that refreshed your recollection about where you would have gotten this information when you made the notes?

A. No.

12:08:40 Q. Let's go to the second note which is on denatured alcohol. The second little bullet there which says "Provides bitter taste," do you know what that's referring to? Do you know what that means?

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Linehan

A. Well, it's my understanding you have to denature the alcohol so that the people in the plant -- that it's not drinkable.

12:09:16 Q. Let's go to the next one which says ingredients. After the number 5 it says "Hazardous substances" is that what it says?

A. Mm-hmm.

12:09:30 Q. "5. Hazardous substances, nicotine sulfate, tobacco extract and ammonia." Did you understand those to be hazardous substances, that's what this note means?

A. I don't really know what this note means.

12:09:52 Q. Okay. The next note says "Extract" and it says "Used for 100 years." Did you understand, do you understand that extract, I assume this means tobacco extract has been used for a hundred years?

A. Did I understand that? I guess I got that from some -- someplace.

12:10:12 Q. Am I right that this is referring to tobacco extract?

A. Yes.

1 '.0:22 Q. Let's go to the next one which is

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nicotine. You see the word manipulate in quotes?

A. Yes.

12:10:34 Q. Would it be fair to say that you're making a note of someone's use of the word manipulate that's why it's in quotes?

A. Yes.

12:10:44 Q. Do you now think that that is the FDA commissioner's use of the word manipulate? Does that refresh your recollection?

A. I don't know.

12:10:54 Q. Do you know if it might be the use of manipulate in the Day One broadcast?

A. I don't know.

12:11:06 Q. And then it says after manipulate, "must control" and then it says what?

A. "Conform to FTC testing."

Must control should be level to

12:11:18 Q. "Conform to FTC testing." I'm trying to make sense of it. So actually it's supposed to read like that?

A. Yes.

12:11:26 Q. "Must control level to conform to FTC testing." Isn't this note seeming to say that in response to manipulate you have to control the level of nicotine in order to get the FTC

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number?

MS. ROBBINS: I object to the form of the question.

12:11:56 Q. Do you understand what I was asking in there?

A. I don't really know what this note means.

12:12:00 Q. You don't know what this note means?

A. No.

12:12:14 Q. Doesn't this note mean that cigarette companies manipulate nicotine because they must control the level of nicotine to conform to the FTC testing?

MS. ROBBINS: I object. You just asked her and she just gave you an answer.

MR. PAYTON: Well, I'm trying to help her here.

A. Could you repeat the question.

12:12:34 Q. Sure. Doesn't this note mean that cigarette companies manipulate nicotine because they must control the level of nicotine to conform to the FTC testing?

A. As I said, I don't know what the note means.

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Linehan

12:12:54 Q. It might mean that?

A. I don't know what it means.

12:13:14 Q. The last note has a reference to the ASH petitions. Do you know what they were, A-S-H?

A. Yeah, ASH is an antismoking group that filed petitions quite a long time ago, but what they specifically asked for I could not tell you. Other than likely FDA jurisdiction or something like that.

12:14:00 Q. Is it fair to say that you would have made these notes on the basis of what someone else at Philip Morris told you about these issues? You didn't independently know these matters, SDA-4?

A. That's correct, I didn't independently know them.

12:14:20 Q. So you made these notes on the basis of what someone else at Philip Morris would have told you about these issues?

A. I don't know.

12:14:30 Q. Well how else would you have made these notes?

A. Reading something or --

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Linehan

12:14:40 Q. Do you recall if in your office you had reference materials that you could consult to learn about these topics, addiction, denatured alcohol, the ingredient list, tobacco extracts, nicotine, reconstituted tobacco?

A. What are reference materials?

12:15:00 Q. I don't know.

A. You mean like a book or something?

12:15:02 Q. Yes.

A. No, I didn't have a book.

12:15:06 Q. Do you recall receiving memoranda or other written materials from Philip Morris that provided information on these topics that you could have made the notes from?

A. I don't recall it specifically.

12:15:24 Q. I'm just trying to narrow this down and I'm wondering if the most logical explanation is that you talked to somebody at Philip Morris about these subjects and made notes?

A. I don't know. I mean it's just as logical that I would read a text of something and make notes. I don't know.

12:16:00 Q. Well, what are you referring to when you say read a text? I mean did you have texts

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Linehan

available? SDA-4, how would you have obtained information on SDA-4?

A. Through testimony or something like that.

MS. ROBBINS: You're talking about texts. There are all sort of informational materials including, for instance, the Eriksen letter could have been around. You're talking about texts as though it's a textbook. You're basically asking her to guess how she made certain notes and I don't think it's fair.

MR. PAYTON: I'm not asking her to guess.

MS. ROBBINS: She said she may have read it someplace.

12:16:48 Q. Is it fair that these are notes that are reflecting Philip Morris's either position or response to various issues that are identified here, addiction, denatured alcohol, ingredients, recon?

A. I don't know what these notes are.

12:17:10 Q. Did you see the actual originals of these notes when you prepared for your deposition?

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A. No.

MS. ROBBINS: You're also assuming that each card does the same thing when you ask your questions and I'm not sure that that's correct, you know, that each card represents a position of some sort. You're asking about many different cards all together.

12:17:58 Q. Do you remember seeing the Day One broadcast that ran on February 28, 1994?

A. Yes.

12:18:04 Q. Do you remember when you saw it? Did you see it when it ran on the 28th or did you see it sometime thereafter?

A. I saw it when it was broadcast.

12:18:14 Q. You saw it the evening of the 28th?

A. Mm-hmm.

12:18:18 Q. Did you see it at home by yourself?

A. Probably.

12:18:22 Q. Did you have a reaction to it?

A. Yeah, I had a general reaction to it.

12:18:28 Q. What was it?

A. I thought it was quite almost like tabloid feature story or something.

18:54 Q. Any other reaction?

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Linehan

A. But --

12:18:58 Q. Go on.

A. I'd never heard any of these issues before really and it was a pretty damaging, if you will, feature, from a media standpoint, to the general public, regarding the industry.

12:19:28 Q. What issue had you not heard of before that was in the Day One broadcast?

A. Well, the one thing -- the only thing that I can remember actually are trucks pulling up from off shore or something like that. That's about all I could remember.

12:19:46 Q. That's the only thing you can remember now that was new to you?

A. No. That's the only thing I remember.

12:19:54 Q. That was new?

A. The implication being that the trucks were full of nicotine.

MS. ROBBINS: Are you asking her visually what she remembers about the show?

MR. PAYTON: No, no.

12:20:14 Q. I'm asking you visually or otherwise the text of the show, what you heard, what you

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Linehan

remember as new. I think you said that you had not heard of some of the things that were in the Day One broadcast before. Okay. Besides the visual of the trucks, do you remember anything else that was new to you?

A. What was new to me was the claim, the general claim.

12:20:44 Q. What was the general claim that you remember?

A. That the manufacturers took extraneous nicotine and applied it to the cigarettes. And the visual I remember was tanker truck or whatever.

12:21:24 Q. Well that's not really new, is it? I think we just went over that exact allegation in Commissioner Kessler's letter, didn't we? Do you want to pull it out? It's Exhibit 12.

MS. ROBBINS: What are you pointing her to?

12:21:58 Q. Do you have Exhibit 12, which is the February 25, 1994 letter? Do you have that in front of you?

A. Mm-hmm.

22:04 Q. If you go to the second page, to the

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paragraph at the very bottom, the sentence, the second sentence in that paragraph which I believe I read says "In fact, it is our understanding that manufacturers commonly add nicotine to cigarettes to deliver specific amounts of nicotine." Do you see that?

A. Yes.

12:22:34 Q. It's the same allegation, isn't it?

MS. ROBBINS: Same as what? What's your question?

12:22:38 Q. Same allegation of what you said was the charge of the Day One story?

A. Well, the Day One story broke this issue or claim ahead of Kessler, according to the broadcast.

12:23:14 Q. Ms. Linehan, I want you to think about that. The Kessler letter comes out on Friday, the 28th. The Day One story runs on Monday, the 28th. The Kessler letter comes out on Friday the 25th. The Day One story comes out on Monday, the 28th. There is a story in a lot of media outlets, television and otherwise about the Kessler letter that comes out on Friday.

A. That's right.

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Linehan

12:23:40 Q. Including the substance of what I just read to you?

A. Yes.

12:23:44 Q. This is not a new allegation, is it?

A. Yes, it's a new allegation to me.

12:23:50 Q. Which is the new version, the Kessler version? I mean you saw the Kessler letter before you saw the Day One broadcast?

MS. ROBBINS: I don't think she ever testified that she saw it on the 25th.

MR. PAYTON: I believe she did.

MS. ROBBINS: On that day?

MR. PAYTON: Yes, I believe she did.

A. I said I didn't know when I saw it.

MS. ROBBINS: I think she said she saw it in that time frame. I don't think she said she saw it on the 25th.

12:24:12 Q. Is it your testimony that you were unaware of the Kessler letter, did not see the Kessler letter when you saw the Day One broadcast on the 28th? Come on, that's not right?

MS. ROBBINS: Look, her testimony is what her testimony is. You're asking also --

MR. PAYTON: I don't want her --

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listen --

MS. ROBBINS: Being aware of the letter and having read the letter word for word on the 25th are two different things. You're asking her what her testimony is, you're not testifying for her.

MR. PAYTON: I am asking her for her testimony but I want her to think about it.

MS. ROBBINS: She doesn't need you to testify for her.

12:24:50 Q. The Kessler letter comes out on the 25th and the Day One runs on the 28th, and you said that the Day One broadcast had something new in it, the allegation about adding nicotine to cigarettes?

A. Yes.

12:25:02 Q. And I'm asking whether or not that was new to you?

A. Yes, it was new to me.

12:25:08 Q. Okay. And does that mean that you did not recall or see that same allegation in the Kessler letter before you saw it on Day One?

A. I don't know.

12:25:28 Q. Do you recall seeing it in the

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Kessler letter after the Day One broadcast?

A. I don't know. My recollection is that the broadcast broke the issue and that the broadcast in fact said that the Kessler letter came out ahead of their broadcast because of the broadcast.

12:26:00 Q. What does that mean?

A. That I guess -- I don't really know, but I remember them featuring the Kessler letter at the end of the broadcast and clearly saying because of our show he wrote this letter.

MS. ROBBINS: Just so the record is complete, Ms. Linehan also testified she saw promos for the show before the Monday broadcast, in the week before the Monday broadcast.

12:27:02 Q. Do you remember anything else about the Day One broadcast that was new to you?

A. No. I just remember the general claim.

12:27:26 Q. Do you remember the discussion of tobacco, reconstituted tobacco in the Day One broadcast?

A. Not specifically.

MR. PAYTON: You want to break for

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lunch?

MS. ROBBINS: Sure. Is this a good time?

MR. PAYTON: Yes.

THE VIDEO OPERATOR: We'll go off the record at 12:29:56 on videotape number 2 and continue the deposition of Kathleen Linehan on videotape number 3 for June 14th, 1995.

(Luncheon recess: 12:29 p.m.)

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